TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1917

No. [redacted] 192

PAUL SCHARRENBERG, PETITIONER,

vs.

THE DOLLAR STEAMSHIP COMPANY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR CERTIORARI FILED JUNE 13, 1918.
CERTIORARI AND RETURN FILED JANUARY 16, 1917.

(25,354)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 524.

PAUL SCHARRENBERG, PETITIONER,

vs.

THE DOLLAR STEAMSHIP COMPANY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 8, 1917.

a United States Circuit Court of Appeals for the Ninth Circuit.

No. 2614.

PAUL SCHARRENBERG, Plaintiff in Error,

vs.

THE DOLLAR STEAMSHIP COMPANY, DOLLAR STEAMSHIP LINE, THE ROBERT DOLLAR COMPANY, Corporations, and JAMES ABERNETHY, Defendants in Error.

TRANSCRIPT OF RECORD.

Upon Writ of Error to the United States District Court of the Northern District of California, First Division.

1 Names and Addresses of Attorneys:

For Plaintiff and Plaintiff in Error: H. W. Hutton, Esq., 527-529 Pacific Building, San Francisco.

For Defendant and Defendant in Error: Messrs. Nathan H. Frank, and Irving H. Frank, 1215 Merch. Exch. Bldg., San Francisco. [1*]

[*Designation of Plaintiff in Error Under Rule* 23.]

In the United States Circuit Court of Appeals for the Ninth Circuit.

PAUL SCHARRENBERG, Plaintiff in Error,

vs.

THE DOLLAR STEAMSHIP COMPANY et al., Defendants in Error.

Plaintiff in error designates the following parts of the record transmitted from the United States District Court for the Northern District of California, which he considers necessary for the consideration of the errors set forth in his assignment of errors upon which he intends to rely, to wit:

The second amended complaint.

Demurrer to the second amended complaint.

Minute order sustaining demurrer to the second amended complaint.

*Page-number appearing at foot of page of certified Transcript of Record.

The opinion of the Court on sustaining the demurrer to the
2 second amended complaint.
The order for judgment.
The judgment.
The assignment of errors.

H. W. HUTTON,
Attorney for Plaintiff in Error.

[Endorsed:] No. 2614. In the United States Circuit Court of Appeals for the Ninth Circuit. Paul Scharrenberg, Plaintiff in Error, vs. The Dollar Steamship Company et al., Defendants in Error. Designation of Parts of Record to be Printed. Copy received this 17th day of June, 1915. Nathan H. Frank, Attys. for Defendants in Error. Filed Jun. 29, 1915. F. D. Monckton, Clerk.

In the District Court of the United States in and for the Northern District of California. First Division.

At Law. No. 15520.

PAUL SCHARRENBERG, Plaintiff.

vs.

THE DOLLAR STEAMSHIP COMPANY, DOLLAR STEAMSHIP LINE, THE ROBERT DOLLAR COMPANY, Corporations, and JAMES ABERNETHY, Defendants.

Second Amended Complaint.

Now comes the plaintiff above named, and by leave of the Court first had and obtained files this, his second amended complaint
3 herein, and complaining of defendants alleges:

I.

That as plaintiff is informed and believes and so avers, defendants, The Dollar Steamship Company, Dollar Steamship Line, and The Robert Dollar Company, on all of the dates and times herein mentioned, were and now are corporations.

II.

That on all of the dates and times herein mentioned, as plaintiff is informed and believes and so avers, the defendants The Dollar Steamship Company, Dollar Steamship Line and the Robert Dollar Company, were the operators of a certain steam merchant vessel flying the British flag, known as and called the "Bessie Dollar," and also a certain American steam merchant vessel flying the American flag, named, known and called "Mackinaw," each of said vessels carrying merchandise, and being operated at the times

herein mentioned, and the defendant James Abernethy was in the employ of the defendant corporations herein as master of said vessel "Bessie Dollar."

III.

That as plaintiff is further informed and believes and so avers the defendants herein at the times hereinafter mentioned, knowingly assisted and encouraged the importation and the migration of a certain contract laborer and alien person, named Dung Pau, into the United States of America, for the purpose of his performing labor in the said United States, he at all of the times herein mentioned being a Chinese person, whose birth place and resi-
4 dence was and is the City of Shanghai, in China, as follows:

IV.

That on the 3d day of December, A. D. 1913, the said vessel "Bessie Dollar," was lying in the Port of Shanghai, in China, with a full complement of officers and a full crew on board, each of whom had signed shipping articles to serve in their respective capacities on said vessel on a voyage thence to other parts of the world and return, and at that time the defendants herein other than defendant James Abernethy, desiring to procure a Chinese person, alien and contract laborer to bring to the United States of America to perform labor for them therein, to wit, to serve as a seaman on board of the said vessel "Mackinaw," and with that intent, they caused the said James Abernethy to engage said contract laborer for that purpose, which he did, and to, and he did enter into a contract in writing with said contract laborer before a Consul of Great Britain at said Shanghai, which said contract was a contract designated and known as shipping articles, and in the instance herein mentioned, were additional and other shipping articles to the shipping articles already as hereinbefore mentioned signed by the officers and crew of the said vessel "Bessie Dollar," which said additional shipping articles were signed by the said defendant Abernethy and the said contract laborer at the request of the other defendants herein, the said Abernethy and the said contract laborer both signing the same as aforesaid, and in said shipping articles the said contract
5 laborer agreed to go on board of the said vessel "Bessie Dollar" and work for defendants, and they agreed to employ him thereon and to bring him to the said United States so that he could work for the said defendants therein other than said defendant Abernethy, although at that time no seaman or other persons were needed to work upon the said "Bessie Dollar," the said shipping articles so signed by said Abernethy and the said contract laborer describing the latter's employment as follows; that is to say said contract laborer was to work as a purported seaman on said vessel "Bessie Dollar."

"On voyages from Shanghai to San Francisco, there to join the S. S. 'Mackinaw,' or any other vessel, within the limits of 70 degrees

north and 70 degrees south latitude, trading to and from as may be required, and back to Shanghai, to be discharged with consent of local authorities. Term of service not to exceed two (2) years. The master has the option to transfer any or all of the within mentioned persons to any other British or Foreign ship bound to Shanghai in the same capacity and at the same rate of wages."

That the real purpose of defendants other than the defendant Abernethy, was to employ said contract laborer within the United States of America, and that after the signing of said contract and on or about the 3d day of December, 1913, the said contract laborer went on board of said vessel "Bessie Dollar" at said Shanghai, and was by the defendants brought on said vessel to the Port of San Francisco, in the State of California, he working as a seaman
6 on said vessel on her passage from said Shanghai to said Port of San Francisco, at which last named place and on or about the 15th day of January, 1914, at said last named place the defendants caused the said contract laborer to be discharged from said vessel, and he was by them discharged from service on her, and thereafter and upon the same day, the defendants herein other than defendant James Abernethy, in pursuance of the purpose for which they had brought the said contract laborer from said Shanghai, hired and employed him in the said Port of San Francisco, and caused him to sign a contract of shipment before the United States Shipping Commissioner for the said Port of San Francisco, on a voyage on said vessel described in said contract of shipment, as follows:

"From San Francisco, Cal., to Shanghai, China, and such other Asiatic Ports as the master may direct, via Grays Harbor, Seattle, Wash., and such other ports on the Pacific Coast as the master may direct; final port of discharge shall be Shanghai, China."

That the Grays Harbor, and the Seattle mentioned in said contract of shipment are each ports, to wit, seaports in the State of Washington. That after the signing of such shipping articles or contract of shipment the said contract laborer went on board of said vessel "Mackinaw" in the employ of defendants other than said James Abernethy, at said Port of San Francisco, on or about the said 15th day of January, 1914, under and pursuant to his said
7 hiring at said Shanghai, to work as a seaman on said vessel "Mackinaw," and worked on board of said vessel in the said Port of San Francisco, for some days, and also on a voyage of said vessel from said San Francisco, to said Grays Harbor and at said Grays Harbor also worked on said vessel as a seaman and pursuant to his said hiring, and did and is now so performing labor on board of said vessel.

That at all the times herein mentioned unemployed labor of a like kind to that performed, and for which the said contract laborer was so contracted with at said Shanghai to perform could have been found in the United States of America, and particularly in those parts of the United States of America, where the said vessel from time to time was, and could have easily been found in the Port of

San Francisco, in the State of California, on the 3d day of December, 1913, and for a long time prior thereto and at all times since.

That by reason of the foregoing plaintiff has been wronged and damaged, and the said defendants have become indebted to the plaintiff in the sum of one thousand ($1,000.00) dollars, plaintiff having been wronged and damaged in that amount, none of which has been paid.

Second Count.

For a further and second cause of action against said defendants plaintiff alleges:

a.

Plaintiff makes the whole of paragraphs numbered I, II and IV, of the first count of this complaint, a part of this second count, to serve in this second count in the order in which they are numbered.

III.

That as plaintiff is further informed and believes, and so avers the defendants herein, at the times hereinafter mentioned, knowingly assisted and encouraged the importation and the migration of a certain contract laborer and alien person named Yuen Mow Shin, into the United States of America, for the purpose of his performing labor in the said United States of America, he at all of the times herein mentioned being a Chinese person, whose birth place and residence was and is in the City of Shanghai, in China.

Third Count.

For a further separate and third cause of action against said defendants, plaintiff alleges:

a.

Plaintiff makes the whole of paragraphs numbered I, II and IV, of the first count of this complaint, a part of this third count, to serve in this third count in the order in which they are numbered.

III.

That as plaintiff is informed and believes and so avers, the defendants herein at the times in paragraph IV hereof mentioned, knowingly assisted and encouraged the importation and the migration of a certain contract laborer and alien person, to wit, one Mau Shing Lang, into the United States of America, for the purpose of his performing labor in the said United States of America, he at all of the times herein mentioned being a Chinese person, whose

9 birthplace and residence was and is the City of Shanghai, in China, *as follows, to wit, as in par- person whose birth place and residence was the City of Shanghai, in China,* said assistance and encouragement being in the manner set forth in paragraph IV, hereof, as follows, to wit:

Fourth Count.

For a further separate and fourth cause of action against said defendants, plaintiff alleges:

a.

Plaintiff makes the whole of paragraphs I, II and IV, of the first count of this complaint a part of this fourth count, to serve as numbered in said first count.

III.

That as plaintiff is further informed and believes, and so avers, the defendants herein, at the times in paragraph IV hereof set forth, knowingly assisted and encouraged the importation and the migration of a certain contract laborer and alien person named Sz Hang Lang, into the United States of America, for the purpose of his performing labor in the said United States of America, he at said times being a Chinese person, whose birthplace and residence was the City of Shanghai, in China, said assistance and encouragement being in the manner set forth in paragraph IV, hereof as follows, to wit:

Fifth Count.

For a further separate and fifth cause of action against said defendants, plaintiff alleges:

a.

10 Plaintiff makes the whole of paragraphs number I, II and IV, of the first count of this complaint a part of this fifth count, to serve as numbered in said first count.

III.

That as plaintiff is further informed and believes, and so avers, the defendants herein at the times in paragraph IV hereof set forth, knowingly assisted and encouraged the importation and the migration of a certain contract laborer and alien person named Chin Pau Sue, into the United States of America, for the purpose of his performing labor in the said United States of America, he at said times being a Chinese person, whose birth place and residence was the City of Shanghai, in China, said assistance and encouragement being in the manner set forth in paragraph IV, hereof, as follows, to wit:

Sixth Count.

For a further separate and sixth cause of action against said defendants, plaintiff alleges:

a.

Plaintiff makes the whole of paragraphs number I, II and IV, of the first count of this complaint a part of this sixth count, to serve as numbered in said first count.

III.

That as plaintiff is further informed and believes, and so avers, the defendants herein, at the times in paragraph IV hereof set forth, knowingly assisted and encouraged the importation and the migration of a certain contract laborer and alien person named
11 Ying Wo Dong, into the United States of America, for the purpose of his performing labor in the said United States of America, he at said times being a Chinese person, whose birth place and residence was the City of Shanghai, in China, said assistance and encouragement being in the manner set forth in paragraph IV, hereof, as follows, to wit:

Seventh Count.

For a further separate and seventh cause of action against said defendants, plaintiff alleges:

a.

Plaintiff makes the whole of paragraphs number I, II and IV, of the first count of this complaint a part of this seventh count, to serve as numbered in said first count.

III.

That as plaintiff is further informed and believes, and so avers, the defendants herein at the times in paragraph IV hereof set forth, knowingly assisted and encouraged the importation and the migration of a certain contract laborer and alien person named Le Shin Knau into the United States of America, for the purpose of his performing labor in the said United States of America, he at said times being a Chinese person whose birth place and residence was the City of Shanghai, in China, said assistance and encouragement being in the manner set forth in paragraph IV hereof, as follows, to wit:

Eighth Count.

For a further separate and eighth cause of action against said defendants, plaintiff alleges:

12 *a.*

Plaintiff makes the whole of paragraphs I, II and IV, of the first count of the complaint a part of this eighth count, to serve as numbered in said first count.

III.

That as plaintiff is further informed and believes and so avers the defendants herein, at the times in paragraph IV hereof set forth, knowingly assisted and encouraged the importation and the migration of a certain contract laborer and alien person named Yan Pam Fung, into the United States of America, for the purpose of his performing labor in the said United States of America, he at said times being a Chinese person, whose birth place and residence was the City of Shanghai, in China, said assistance and encouragement being in the manner set forth in paragraph IV, hereof as follows, to wit:

Ninth Count.

For a further separate and ninth cause of action against said defendants, plaintiff alleges:

a.

Plaintiff makes the whole of paragraphs I, II and IV, of the first count of this complaint, a part of this ninth count, to serve as numbered in said first count.

III.

That as plaintiff is further informed and believes and so avers, the defendants herein, at the times in paragraph IV hereof set forth, knowingly assisted and encouraged the importation and the migration of a certain contract laborer and alien person named Chu Chang Kwa, into the United States of America, for the purpose of
13 his performing labor in the said United States of America, he at said times being a Chinese person, whose birth place and residence was the City of Shanghai, in China, said assistance and encouragement being in the manner set forth in paragraph IV hereof as follows, to wit:

Tenth Count.

For a further, separate and tenth cause of action against said defendants, plaintiff alleges:

a.

Plaintiff makes the whole of paragraphs I, II and IV, of the first count of this complaint, a part of this tenth count, to serve as they are numbered in said first count, in this tenth count.

III.

That as plaintiff is further informed and believes and so avers, the defendants herein, at the times in paragraph IV hereof set forth, knowingly assisted and encouraged the importation and the migration of a certain contract laborer and alien person named Wong Chin Muk, into the United States of America, for the purpose of his performing labor in the said United States of America, he at said times being a Chinese person, whose birth place and residence was the City of Shanghai in China, said assistance and encouragement being in the manner set forth in paragraph IV hereof, as follows, to wit:

Eleventh Count.

For a further, separate and eleventh cause of action against said defendants, plaintiff alleges:

a.

Plaintiff makes the whole of paragraphs I, II and IV, of the
14 first count of this complaint a part of this eleventh count, to serve as they are numbered in said first count, in this eleventh count.

III.

That as plaintiff is further informed and believes and so avers, the defendants herein at the times in paragraph IV, hereof set forth, knowingly assisted and encouraged the importation and the migration of a certain contract laborer and alien person named San Sang Dong, into the United States of America, for the purpose of his performing labor in the said United States of America, he at said times being a Chinese person, whose birth place and residence was the City of Shanghai in China, as follows:

Twelfth County.

For a further, separate and twelfth cause of action against said defendants, plaintiff alleges:

a.

Plaintiff makes the whole of paragraphs I, II and IV, of the first count of this complaint, a part of this twelfth count, to serve as they are numbered in said first count, in this count.

III.

That as plaintiff is further informed and believes, and so avers, the defendants herein, at the times in paragraph IV hereof set forth, knowingly assisted and encouraged the importation and the migra-

tion of a certain contract laborer and alien person named Ching Lung, into the United States of America, for the purpose of his performing labor in the said United States of America, he at said times being a Chinese person, whose birth place and residence was
15 the City of Shanghai in China, said assistance and encouragement being in the manner set forth in paragraph IV hereof as follows, to wit:

Thirteenth Count.

For a further, separate and thirteenth cause of action against said defendants, plaintiff alleges.

a.

Plaintiff makes the whole of paragraphs I, II and IV, of the first cause of action of this complaint, a part of this thirteenth count to serve in the order in which they are numbered in said first count, in this count.

III.

That as plaintiff is further informed and believes and so avers, the defendants herein, at the times in paragraph IV hereof set forth, knowingly assisted and encouraged the importation and the migration of a certain contract laborer and alien person named Ho Ah Chun into the United States of America, for the purpose of his performing labor in the said United States of America, he at said times being a Chinese person, whose birth place and residence was the City of Shanghai in China, as follows, to wit:

Fourteenth Count.

For a further, separate and fourteenth cause of action against said defendants, plaintiff alleges:

a.

Plaintiff makes the whole of paragraphs I, II and IV, of the first count of this complaint, a part of this fourteenth count, to serve as they are numbered in said first count, in this count.

16 III.

That as plaintiff is further informed and believes and so avers, the defendants herein, at the times herein in paragraph IV hereof set forth, knowingly assisted and encouraged the importation and the migration of a certain contract laborer and alien person named Ye Pan Lo, into the United States of America, for the purpose of his performing labor in the said United States of America, he at said times being a Chinese person, whose birth place and residence was the City of Shanghai in China, said assistance and encouragement being in the manner set forth in paragraph IV hereof, as follows, to wit:

Fifteenth Count.

For a further, separate and fifteenth cause of action against said defendants, plaintiff alleges:

a.

Plaintiff makes the whole of paragraphs I, II and IV, of the first count of this complaint a part of this fifteenth count, to serve as they are numbered in said first count, in this count.

III.

That as plaintiff is further informed and believes and so avers, the defendants herein, at the times herein in paragraph IV hereof set forth knowingly assisted and encouraged the importation and the migration of a certain contract laborer and alien person Tsang Po, into the United States of America, for the purpose of his performing labor in the said United States of America, he at said times being a Chinese person, whose birth place and residence was the City
17 of Shanghai in China, said assistance and encouragement being in the manner set forth in paragraph IV hereof, as follows, to wit:

Sixteenth Count.

For a further, separate and sixteenth cause of action against said defendants, plaintiff alleges:

a.

Plaintiff makes the whole of paragraphs I, II and IV, of the first count of this complaint, a part of this sixteenth count, to serve as they are numbered in said first count, in this count.

III.

That as plaintiff is further informed and believes and so avers, the defendants herein, at the times in paragraph IV hereof mentioned and set forth, knowingly assisted and encouraged the importation and the migration of a certain contract laborer and alien person named Tsan Kang, into the United States of America, for the purpose of his performing labor in the said United States of America, he at said times being a Chinese person, whose birth place and residence was the City of Canton, in China, said assistance and encouragement being in the manner set forth in paragraph IV hereof, as follows, to wit:

Seventeenth Count.

For a further, separate and seventeenth cause of action against said defendants, plaintiff alleges:

a.

18 Plaintiff makes the whole of paragraphs II and IV, of the first count of this complaint a part of this seventeenth count, to serve as they are numbered in said first count, in this count.

III.

That as plaintiff is further informed and believes and so avers, the defendants herein, at the times in paragraph IV hereof mentioned and set forth, knowingly assisted and encouraged the importation and the migration of a certain contract laborer and alien person named Ching Ling, into the United States of America, for the purpose of his performing labor in the said United States of America, he at said times being a Chinese person, whose birth place and residence was the City of Canton in China, said assistance and encouragement being in the manner set forth in paragraph IV hereof, as follows, to wit:

Eighteenth Count.

For a further and separate and eighteenth cause of action against said defendants, plaintiff alleges:

a.

Plaintiff makes the whole of paragraphs I, II and IV, of the first count of this complaint, a part of this eighteenth count, to serve in the order in which they are numbered in said first count, in this count.

III.

That as plaintiff is further informed *a* believes and so avers, the defendants herein, at the times in paragraph IV hereof mentioned and set forth, knowingly assisted and encouraged the importation and the migration of a certain contract laborer and alien person named Tsang On *Tsang On* into the United States of America, for the purpose of his performing labor in the said United States of
19 America, he at said times being a Chinese person, whose birth place and residence was the City of Canton in China, said assistance and encouragement being in the manner set forth in paragraph IV hereof, as follows, to wit:

Nineteenth Count.

For a further, separate and nineteenth cause of action against said defendants, plaintiff alleges:

a.

Plaintoff makes the whole of paragraphs I, II and IV, of the first count of this complaint, a part of this nineteenth count, to serve in the order in which they are numbered in said first count in this count.

III.

That as plaintiff is further informed and believes and so avers, the defendants herein, at the times in paragraph IV hereof mentioned and set forth, knowingly assisted and encouraged the importation and the migration of a certain contract laborer and alien person named Wong Fook into the United States of America, for the purpose of his performing labor in the said United States of America, he at said times being a Chinese person whose birth place and residence was a certain city called Hongkong, in China, said assistance and encouragement being in the manner set forth in paragraph IV hereof as follows, to wit:

Wherefore, plaintiff prays judgment against said defendants for the sum of nineteen thousand ($19,000.00) dollars and costs of this action.

H. W. HUTTON,
Attorney for Plaintiff.

20 UNITED STATES OF AMERICA,
Northern District of California, ss:

Paul Scharrenberg, being first duly sworn, deposes and says as follows:

I am the plaintiff above named, I have read the foregoing second amended complaint and I know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated on information or belief and as to those matters I believe it to be true.

PAUL SCHARRENBERG.

Subscribed and sworn to before me this 28th day of May, 1915.

[SEAL.] L. H. ANDERSON,
Notary Public in and for the City and County of San Francisco, State of California.

Copy received this 28th day of May, 1914.

NATHAN H. FRANK,
Attorney for Defendants.

[Endorsed:] Filed May 29, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

In the District Court of the United States in and for the Northern District of California, Division One.

At Law. 15520.

PAUL SCHARRENBERG, Plaintiff,

v.

THE DOLLAR STEAMSHIP COMPANY et al., Defendants.

21 *Demurrer to Second Amended Complaint.*

The defendants in the above-entitled cause file this, their Demurrer to the Second Amended Complaint on file herein, and for cause of demurrer allege as follows:

I.

That the first count in said second amended complaint set forth does not state facts sufficient to constitute a cause of action.

II.

That the second count in said second amended complaint set forth does not state facts sufficient to constitute a cause of action.

III.

That the third count in said second amended complaint set forth does not state facts sufficient to constitute a cause of action.

IV.

That the fourth count in said second amended complaint set forth does not state facts sufficient to constitute a cause of action.

V.

That the fifth count in said second amended complaint set forth does not state facts sufficient to constitute a cause of action.

VI.

That the sixth count in said second amended complaint set forth does not state facts sufficient to constitute a cause of action.

VII.

That the seventh count in said second amended complaint
22 set forth does not state facts sufficient to constitute a cause of action.

VIII.

That the eighth count in said second amended complaint set forth does not state facts sufficient to constitute a cause of action.

IX.

That the ninth count in said second amended complaint set forth does not state facts sufficient to constitute a cause of action.

X.

That the tenth count in said second amended complaint set forth does not state facts sufficient to constitute a cause of action.

XI.

That the eleventh count in said second amended complaint set forth does not state facts sufficient to constitute a cause of action.

XII.

That the twelfth count in said second amended complaint set forth does not state facts sufficient to constitute a cause of action.

XIII.

That the thirteenth count in said second amended complaint set forth does not state facts sufficient to constitute a cause of action.

XIV.

That the fourteenth count in said second amended complaint set forth does not state facts sufficient to constitute a cause of action.

XV.

That the fifteenth count in said second amended com-
23 plaint set forth does not state — sufficient to constitute a cause of action.

XVI.

That the sixteenth count in said second amended complaint set forth does not state facts sufficient to constitute a cause of action.

XVII.

That the seventeenth count in said second amended complaint set forth does not state facts sufficient to constitute a cause of action.

XVIII.

That the nineteenth count in said second amended complaint set forth does not state facts sufficient to constitute a cause of action.

Wherefore, said defendants pray that said cause may be dismissed, and for their costs therein.

NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys for Defendants.

We hereby certify that the foregoing Demurrer to Second Amended Complaint is in our opinion well taken in point of law, and that the same is not interposed for purposes of delay.

Dated, June 5th, 1914.

NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys for Defendants.

Receipt of a copy of the within Demurrer to Second Amended Complaint is hereby admitted this 5th day of June, 1914.

H. W. HUTTON,
Attorney for Plaintiff.

24 [Endorsed:] Filed Jun. 8, 1914. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

In the District Court of the United States in and for the Northern District of California, First Division.

In Admiralty. No. 15520.

PAUL SCHARRENBERG, Plaintiff,

vs.

THE DOLLAR STEAMSHIP COMPANY et al., Defendants.

Order Sustaining Demurrer to 2d Amended Complaint.

H. W. Hutton, Esq., Attorney for Plaintiff.
Nathan H. Frank and Irving H. Frank, Attorneys for Defendants.

The Second Amended Complaint does not present any state of facts differing in principle from those held to be insufficient to state a cause of action, when the demurrer to a prior Complaint was sustained.

The Demurrer to the Second Amended Complaint will, therefore, be sustained.

January 20th, 1915.

M. T. DOOLING, *Judge.*

[Endorsed:] Filed Jan. 20, 1915. W. B. Maling, Clerk, by Lyle S. Morris, Deputy Clerk.

25 In the District Court of the United States in and for the Northern District of California, First Division.

At Law. No. 15520.

PAUL SCHARRENBERG, Plaintiff,

vs.

THE DOLLAR STEAMSHIP COMPANY et al., Defendants.

Request to Enter Judgment.

To the Clerk of the Above-entitled Court:

No leave to amend having been given upon the sustaining of defendants' demurrer to plaintiff's second amended complaint, and plaintiff desiring to have the order sustaining said demurrer reviewed by the Appellate Court, you will please enter up judgment for defendants.

Dated May 27th, 1915.

H. W. HUTTON,
Attorney for Plaintiff.

[Endorsed:] Filed May 27, 1915. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

26 In the District Court of the United States for the Northern District of California, First Division.

No. 15520.

PAUL SCHARRENBERG, Plaintiff,

vs.

THE DOLLAR STEAMSHIP CO. and JAMES ABERNETHY, Defendants.

Judgment.

In this cause, the Court having ordered that Defendants' Demurrer to the Second Amended Complaint be sustained, without leave to amend, and that Judgment be entered accordingly:

Now, therefore, by virtue of the law and by reason of the premises

aforesaid, it is considered by the Court that plaintiff take nothing by this action and that the defendants go hereof without day.

Judgment entered this 27th day of May, A. D. 1915.

W. B. MALING, *Clerk,*
By C. W. CALBREATH,
Deputy Clerk.

27 In the District Court of the United States in and for the Northern District of California, First Division.

At Law.

PAUL SCHARRENBERG, Plaintiff,

vs.

THE DOLLAR STEAMSHIP COMPANY et al., Defendants.

Assignment of Errors.

I.

The Court erred in sustaining defendants' demurrer to plaintiff's second amended complaint, for the reason that said complaint showed clearly that defendants at Shanghai in China, entered into a contract in writing with each of the persons named in said complaint, and each of whom were aliens, under and by which contract each of said aliens came to the United States, to perform services therein for said defendants, and that said defendants knowingly assisted and encouraged each of said aliens to come to the United States to pe-form labor therein under such contract of employment, and said defendants thereby encouraged and assisted in the importation of alien contract laborers into the United States.

Dated May 28th, 1915.

H. W. HUTTON,
Attorney for Plaintiff.

27½ [Endorsed:] Filed May 28, 1915. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

[Endorsed:] No. 2614. United States Circuit Court of Appeals for the Ninth Circuit. Paul Scharrenberg, Plaintiff in Error, vs. The Dollar Steamship Company, Dollar Steamship Line, The Robert Dollar Company, Corporations, and James Abernethy, Defendants in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Northern District of California, First Division.

Filed June 17, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit,
By MEREDITH SAWYER,
Deputy Clerk.

28 In the District Court of the United States in and for the Northern District of California, First Division.

At Law.

PAUL SCHARRENBERG, Plaintiff,

vs.

THE DOLLAR STEAMSHIP COMPANY et al., Defendants.

Assignment of Errors.

I.

The Court erred in sustaining defendants' demurrer to plaintiff's second amended complaint, for the reason that said complaint showed clearly that defendants at Shanghai in China, entered into a contract in writing with each of the persons named in said complaint, and each of whom were aliens, under and by which contract each of said aliens came to the United States, to perform services therein for said defendants, and that said defendants knowingly assisted and encouraged each of said aliens to come to the United States to perform labor therein under such contract of employment, and said defendants thereby encouraged and assisted in the importation of alien contract laborers into the United States.

Dated May 28th, 1915.

H. W. HUTTON,
Attorney for Plaintiff.

28½ [Endorsed:] Filed May 28, 1915. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

[Endorsed:] No. 2614. United States Circuit Court of Appeals for the Ninth Circuit. Paul Scharrenberg, Plaintiff in Error vs. The Dollar Steamship Company, Dollar Steamship Line, The Robert Dollar Company, Corporations, and James Abernethy, Defendants in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Northern District of California, First Division.

Filed June 17, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.
By MEREDITH SAWYER,
Deputy Clerk.

[Endorsed:] Printed Transcript of Record. Filed July 16, 1915. F. D. Monckton, Clerk.

29 & 30 United States Circuit Court of Appeals for the Ninth Circuit.

No. 2614.

PAUL SCHARRENBERG, Plaintiff in Error,

vs.

THE DOLLAR STEAMSHIP COMPANY, DOLLAR STEAMSHIP LINE, THE ROBERT DOLLAR COMPANY, Corporations, and James Abernethy, Defendants in Error.

Upon Writ of Error to the United States District Court of the Northern District of California, First Division.

Proceedings Had in the United States Circuit Court of Appeals for the Ninth Circuit.

31 At a Stated Term, to wit, the October Term, A. D. 1915, of the United States Circuit Court of Appeals for the Ninth Circuit, Held in the Court-room thereof, in the City and County of San Francisco, in the State of California, on Thursday, the Fourth Day of November, in the Year of Our Lord One Thousand Nine Hundred and fifteen.

Present: The Honorable William B. Gilbert, Senior Circuit Judge, presiding; Honorable Erskine M. Ross, Circuit Judge; Honorable Frank H. Rudkin, District Judge.

No. 2614.

PAUL SCHARRENBERG, Plaintiff in Error,

vs.

THE DOLLAR STEAMSHIP COMPANY, a Corporation, et al., Defendants in Error.

Order of Submission.

Ordered, above-entitled cause argued by Mr. H. W. Hutton, counsel for the plaintiff in error, and by Mr. Nathan H. Frank, counsel for the defendants in error, and submitted to the Court for consideration and decision.

32 At a Stated Term, to wit, the October Term, A. D. 1915, of the United States Circuit Court of Appeals for the Ninth Circuit, Held in the Court-room thereof, in the City and County of San Francisco, in the State of California, on Monday, the Fourteenth Day of February, in the Year of Our Lord One Thousand Nine Hundred and Sixteen.

Present: The Honorable William B. Gilbert, Senior Circuit Judge, presiding; Honorable William W. Morrow, Circuit Judge; Honorable William H. Hunt, Circuit Judge.

In the Matter of the Filing of Certain Opinions and of the Filing and Recording of Certain Judgments and Decrees.

By direction of the Honorable William B. Gilbert and Erskine M. Ross, Circuit Judges, and the Honorable Frank H. Rudkin, District Judge, before whom the causes were heard, ordered that the typewritten opinion this day rendered by this Court in each of the following entitled causes be forthwith filed by the Clerk, and that a Judgment or Decree be filed, and recorded in the Minutes of this Court, in each of the causes in accordance with the Opinion filed therein: * * * Paul Scharrenberg, Plaintiff in Error, vs. The Dollar Steamship Company et al., Defendants in Error. No. 2614.

33 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 2614.

PAUL SCHARRENBERG, Plaintiff in Error,

vs.

THE DOLLAR STEAMSHIP COMPANY, DOLLAR STEAMSHIP LINE, THE ROBERT DOLLAR COMPANY, Corporations, and James Abernethy, Defendants in Error.

Opinion U. S. Circuit Court of Appeals.

This was an action by a private party to recover penalties for knowingly assisting, encouraging, and soliciting the migration and importation of contract laborers into the United States in violation of the Act of Congress of February 20, 1907, as amended by the Act of March 26, 1910, commonly known as the Immigration Act. (34 Stat. 898; 36 Stat. 263.) Section 4 of that Act provides:

"That it shall be a misdemeanor for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation or in any way to assist or encourage the importation or migration of any contract laborer or contract laborers into the United States, unless such contract laborer or contract laborers are exempted under the terms of the last two provisos contained in section 2 of this act."

34 Section 5 provides:

"That for every violation of any of the provisions of Section Four of this Act the persons, partnership, company, or corporation violating the same, by knowingly assisting, encouraging, or soliciting the migration or importation of any contract laborer into the United States shall forfeit and pay for every such offense the sum of One Thousand Dollars, which may be sued for and recovered

by the United States, or by any person who shall first bring his action therefor in his own name and for his own benefit, including any such alien thus promised labor or service of any kind as aforesaid, as debts of like amount are now recovered in the courts of the United States; and separate suits may be brought for each alien thus promised labor or service of any kind as aforesaid."

The complaint contains nineteen counts or causes of action in all; but the several counts or causes of action are identical as to the name of the alien immigrant. After alleging the incorporation of the defendants, The Dollar Steamship Company, Dollar Steamship Line, and The Robert Dollar Company; that the defendants were the operators of a certain steam merchant vessel flying the British flag known as the "Bessie Dollar," and of a certain American steamship merchant vessel flying the American flag known as the "Mackinaw," and that the defendant Abernethy was in the employ of the defendants as master of the steamship "Bessie Dollar," the complaint proceeds as follows:

35 "That as plaintiff is further informed and believes, and so avers the defendant herein at the times hereinafter mentioned, knowingly assisted and encouraged the importation and the migration of a certain contract laborer and alien person, named Dung Pau, into the United States of America, for the purpose of his performing labor in the said United States, he at all of the times herein mentioned being a Chinese person, whose birth place and residence was and is the City of Shanghai, in China, as follows:

"That on the 3d day of December, A. D. 1913, the said vessel 'Bessie Dollar,' was lying in the Port of Shanghai, in China, with a full complement of officers and a full crew on board, each of whom had signed shipping articles to serve in their respective capacities on said vessel, on a voyage thence to other parts of the world and return, and at that time the defendants herein other than defendant James Abernethy, desiring to procure a Chinese person, alien and contract laborer to bring to the United States of America to perform labor for them therein, to wit, to serve as a seaman on board of the said vessel 'Mackinaw,' and with that intent, they caused the said James Abernethy to engage said contract laborer for that purpose, which he did, and to, and he did enter into a contract in writing with said contract laborer before a Consul of Great Britain at said Shanghai, which said contract was a contract designated and known as shipping articles, and in the instance herein mentioned, were addi-

36 tional and other shipping articles to the shipping articles already as hereinbefore mentioned signed by the officers and crew of the said vessel 'Bessie Dollar,' which said additional shipping articles were signed by the said defendant Abernethy and the said contract laborer at the request of the other defendants herein, the said Abernethy and the said contract laborer both signing the same as aforesaid, and ... said shipping articles the said contract laborer agreed to go on board of the said vessel 'Bessie Dollar' and work for defendants, and they agreed to employ him thereon and to bring him to the said United States so that he could work for the said defendant therein other than defendant Aber-

nethy, although at that time no seaman or other persons were needed to work upon the said 'Bessie Dollar,' the said shipping articles so signed by said Abernethy and the said contract laborer describing the latter's employment as follows: that is to say said contract laborer was to work as a purported seaman on said vessel 'Bessie Dollar.'

"'On voyages from Shanghai to San Francisco, there to join the S. S. "Mackinaw," or any other vessel, within the limits of 70 degrees north and 70 degrees south latitude, trading to and from as may be required, and back to Shanghai, to be discharged with consent of local authorities. Term of service not to exceed two (2) years. The master has the option to transfer any or all of
37 the within mentioned persons to any other British or foreign ship bound to Shanghai in the same capacity and at the same rate of wages.'

"That the real purpose of defendants other than the defendant Abernethy, was to employ said contract laborer within the United States of America, and that after the signing of said contract and on or about the 3d day of December, 1913, the said contract laborer went on board of said vessel 'Bessie Dollar' at said Shanghai, and was by the defendants brought on said vessel to the Port of San Francisco, in the State of California, he working as a seaman on said vessel on her passage from said Shanghai to said Port of San Francisco, at which said last named place and on or about the 15th day of January, 1914, at said last named place the defendants caused the said contract laborer to be discharged from said vessel, and he was by them discharged from service on her, and thereafter and upon the same day, the defendants herein other than defendant James Abernethy, in pursuance of the purpose for which they had brought the said contract laborer from said Shanghai, hired and employed him in the said Port of San Francisco, and caused him to sign a contract of shipment before the United States Shipping Commissioner for the said Port of San Francisco, on a voyage on said vessel described in said contract of shipment, as follows:

"'From San Francisco, Cal., to Shanghai, China, and
38 such other Asiatic Ports as the master may direct, via Grays Harbor, Seattle, Wash., and such other ports on the Pacific Coast as the master may direct; final port of discharge shall be Shanghai, China.'

"That the Grays Harbor, and the Seattle mentioned in said contract of shipment are each ports, to wit, seaports in the State of Washington. That after the signing of such shipping articles or contract of shipment the said contract laborer went on board of said vessel 'Mackinaw' in the employ of defendants other than said James Abernethy, at said Port of San Francisco, on or about the said 15th day of January, 1914, under and pursuant to his said hiring at said Shanghai, to work as a seaman on said vessel 'Mackinaw' and worked on board of said vessel in the said Port of San Francisco, for some days, and also on a voyage of said vessel from said San Francisco, to said Grays Harbor and at said Grays Harbor also worked on said vessel as a seaman and pursuant to his said hiring, and did and is now so performing labor on board of said vessel."

The complaint then alleges that the contract laborers were not exempted under the terms of the last two provisos contained in section two of the Act in question. A demurrer to this, the second amended complaint, was sustained, without leave to amend, and the present writ of error was sued out to reverse a judgment dismissing the action.

H. W. Hutton, for Plaintiff in Error.
Nathan H. Frank, for Defendants in Error.

Before Gilbert and Ross, Circuit Judges, and Rudkin, District Judge.

RUDKIN, *District Judge*, after stating the facts as above, delivered the opinion of the court:

No doubt, as contended by the plaintiff in error, the public and private vessels of every nation while on the high seas, and without the territorial limits of any State, are subject to the jurisdiction of the State to which they belong, and are in many respects considered a part of its territory.

Crapo v. Kelly, 16 Wall., 610.
Wilson v. McNamee, 102 U. S., 572.

But it does not follow from this that a merchant vessel flying the American flag is a part of the United States within the meaning of the immigration laws; or that a sailor whose home is on the sea is a contract laborer within the purview of these laws.

Taylor v. United States, 207 U. S., 120.
United States v. Sandrey, 48 Fed., 550.
United States v. Burke, 99 Fed., 895.
Holy Trinity Church v. United States, 153 U. S., 457.

In Taylor v. United States, supra, the Court said:

"'Landing from such vessel' takes place and is complete the moment the vessel is left and the shore reached. But it is necessary to commerce, as all admit, that sailors should go ashore, and no one believes that the statute intended altogether to prohibit their doing so. The contrary always has been understood of the earlier acts, in judicial decisions and executive practice. If we reject the ambiguous interpretation of 'to land,' as we have, the necessary result can be reached only by saying that the section does not apply to sailors carried to an American port with a bona fide intent to take them out again when the ship goes on, when not only there was no ground for supposing that they were making the voyage a pretext to get here, desert and get in, but there is no evidence that they were doing so in fact. Whether this result is reached by the interpretation of the words 'bringing an alien to the United States,' that has been suggested, or on the ground that the statute cannot have intended its precautions to apply to the ordinary and necessary landing of seamen, even if the words of the section embrace it, as in Church of Holy Trinity v. United States, 143 U. S., 457, does not matter for this case. We think it superfluous to go through all the

sections of the act for confirmation of our opinion. It is enough to say that we feel no doubt when we read the act as a whole."

In United States v. Sandrey, supra, the Court said:

"As clearly appears, the act deals only with the importation of aliens under contract to labor and alien immigration. It is only with regard to alien immigrants that the act imposes duties
41 upon the masters and agents of vessels, or provides penalties for the non-performance of duties by such masters and agents. An alien immigrant to the United States is an alien who comes or removes into the United States for the purpose of permanent residence. Aliens composing crews of vessels, visiting our seaports are in no sense immigrants, and, as a review of the statute as above shows, are in no wise affected by the law in question. With regard to them, the said law imposes no duties nor penalties upon the masters and agents of vessels."

In United States v. Burke, supra, the Court said:

"The legislation contained in the various statutes that have been passed relating to immigration is clearly directed against the immigration into this country of certain classes of persons who come in with the intent to enter into and become a part of the mass of its citizenship or population. Immigration is defined to be the entering into a country with the intention of residing in it. The earlier statutes merely prohibit contract laborers being brought in. The later ones prohibit the bringing in of immigrants,—persons who come into the country with the intention of remaining, of fixing a residence here,—and who are calculated to become a charge upon the country, or who are unfit, on account of moral character, previous convictions of crime, or disease, to be admitted as citizens. Nothing in the scope of the statutes seems to contemplate or can be
42 rationally held to contemplate, the prohibition of the bringing within the country by vessels of their crews engaged under contract made out of the country, to labor on the vessels while approaching and while in the ports of this country, and to sail again with the vessels from this country."

And after reviewing the different sections of the Immigration Act the Court continued:

"A consideration of the whole legislation on the subject of immigration, of the circumstances surrounding its enactment, and of the unjust results which would follow from giving such meaning to it as is here claimed for it, makes it unreasonable to believe that Congress intended to include a case like the present one. My opinion is that these statutes do not contemplate the exclusion of the crews of vessels which lawfully trade to our ports, and that they do not, in spirit or in letter, apply to seamen engaged in their calling, whose home is the sea; who are here to-day and gone to-morrow; who come on a vessel into the United States with no purpose to reside therein, but with the intention, when they come, of leaving again, on that or some other vessel, for the port of shipment or some other foreign port in the course of her trade. To hold that these statutes apply to aliens comprising the bona fide crews of vessels engaged in commerce between the United States and foreign countries would lead to great

injustice to such vessels, oppression to their crews, and serious consequences to commerce."

43 In an opinion to the Secretary of the Treasury, Acting Attorney General Beck quoted at length from the decision in United States v. Burke, supra, and said:

"Were I at liberty to disregard this authoritative interpretation of the immigration statutes, I would feel constrained to say that the reasoning of Judge Toulmin seems to me entirely sound, and that it would be injurious to our commerce, and, therefore, to the public interests, to hold broadly and without exception that seamen as a class are within the purview of the immigration statutes. It is true that Congress has not excepted them from the express language of these statutes, but in the practical administration of these laws they have always been excepted, and their inclusion in the class of alien immigrants would lead to consequences so destructive to legitimate commerce that such inclusion can fairly be disregarded as beyond the intention of Congress."

23 Op. Atty. Gen., 521.

The Rules adopted and promulgated by the Department of Labor which is charged with the administration and enforcement of the immigration laws are in entire harmony with these views. For these reasons the demurrer was properly sustained and the judgment of the court below is affirmed.

[Endorsed:] Opinion. Filed Feb. 14, 1916. F. D. Monckton, Clerk.

44 United States Circuit Court of Appeals for the Ninth Circuit.

No. 2614.

PAUL SCHARRENBERG, Plaintiff in Error,

vs.

THE DOLLAR STEAMSHIP COMPANY, DOLLAR STEAMSHIP LINE, THE ROBERT DOLLAR COMPANY, Corporations, and JAMES ABERNETHY, Defendants in Error.

In Error to the District Court of the United States for the Northern District of California, First Division.

Judgment U. S. Circuit Court of Appeals.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Northern District of California, First Division and was duly submitted:

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is affirmed, with costs in favor of the defendants in error against the plaintiff in error.

It is further ordered and adjudged by this Court that the defendants in error recover against the plaintiff in error for their costs herein expended, and have execution therefor.

45 [Endorsed:] Judgment. Filed and entered Feb. 14, 1916. F. D. Monckton, Clerk by Paul P. O'Brien, Deputy Clerk.

At a Stated Term, to wit, the October Term, A. D. 1915, of the United States Circuit Court of Appeals for the Ninth Circuit, Held in the Court-room Thereof, in the City and County of San Francisco, in the State of California, on Monday, the Eighth Day of May, in the Year of Our Lord One Thousand Nine Hundred and Sixteen.

Present: The Honorable William B. Gilbert, Senior Circuit Judge, Presiding; Honorable Erskine M. Ross, Circuit Judge; Honorable William H. Hunt, Circuit Judge.

No. 2614.

PAUL SCHARRENBERG, Plaintiff in Error,

vs.

THE DOLLAR STEAMSHIP COMPANY et al., Defendants in Error.

Order Denying Petition for Rehearing.

On consideration thereof, and by direction of the Honorable William B. Gilbert and Erskine M. Ross, Circuit Judges, and the Honorable Frank H. Rudkin, District Judge, before whom the case was heard, it is ordered that the Petition filed March 3, 1916, on behalf of the plaintiff in error for a rehearing of the above-entitled cause be, and hereby is denied.

46 At a Stated Term, to wit, the October Term, A. D. 1915, of the United States Circuit Court of Appeals for the Ninth Circuit, Held in the Court-room Thereof, in the City and County of San Francisco, in the State of California, on Monday, the Eighth Day of May, in the Year of Our Lord One Thousand Nine Hundred and Sixteen.

Present: The Honorable William B. Gilbert, Senior Circuit Judge, Presiding; Honorable Erskine M. Ross, Circuit Judge; Honorable William H. Hunt, Circuit Judge.

No. 2614.

PAUL SCHARRENBERG, Plaintiff in Error,

vs.

THE DOLLAR STEAMSHIP COMPANY et al., Defendants in Error.

Order Staying Issuance of Mandate Under Rule 32 Until Petition to Supreme Court U. S. for Writ of Certiorari is Disposed of on Condition That Such Petition be Docketed Thirty Days from and After the 15th Instant.

Upon motion of Mr. H. W. Hutton, counsel for the plaintiff in error, and good cause therefor appearing, it is ordered that the Mandate under Rule 32 of this court in the above-entitled cause be, and hereby is stayed until the petition of the plaintiff in error to
47 the Supreme Court of the United States for the issuance of a Writ of Certiorari herein, be disposed of by the said Supreme Court, on condition that the said petition be docketed in the said Supreme Court within thirty (30) days from and after the 8th instant.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2614.

PAUL SCHARRENBERG, Plaintiff in Error,

vs.

THE DOLLAR STEAMSHIP COMPANY, DOLLAR STEAMSHIP LINE, THE ROBERT DOLLAR COMPANY, Corporations, and JAMES ABERNETHY, Defendants in Error.

Præcipe for Transcript of Record.

To the Clerk of the said Court:

SIR: Please make and furnish me with a certified printed Transcript of the Record (including the proceedings had in said Circuit Court of Appeals) and not less than thirty uncertified copies thereof, for use on an application to be made to the Supreme Court of the United States for the issuance of a writ of certiorari under Section 240 of the Judicial Code, in the above-entitled cause, the said transcript to consist of a copy of the following:

1. Printed Transcript of Record on which the cause was heard in said Circuit Court of Appeals, to which will be added a
48 printed copy of the following-entitled proceedings that were had, and of the papers that were filed in said Circuit Court of Appeals, viz:

2. Order of Submission, entered Nov. 4, 1915;

3. Order Directing Filing of Opinion and Filing and Recording of Judgment, entered Feb. 14, 1916;
4. Opinion, filed Feb. 14, 1916;
5. Judgment, filed and entered Feb. 14, 1916;
6. Order Denying Petition for Rehearing, entered May 8, 1916;
7. Order Staying Issuance of Mandate, etc., entered May 15, 1916;
8. Praecipe for Certified Transcript of Record, etc., and
9. Certificate of Clerk U. S. Circuit Court of Appeals to Transcript.

Please prepare thirty or more uncertified printed copies of said record by printing thirty or more copies of the above mentioned proceedings that were had and papers that were filed in said cause in said Circuit Court of Appeals, and by binding one of the latter printed copies of said proceedings, etc., at the end of thirty or more extra copies of the printed Transcript of Record on which said cause was heard in said Circuit Court of Appeals.

H. W. HUTTON,
Counsel for Plaintiff in Error.

[Endorsed:] Praecipe for Transcript of Record. Filed May 22, 1916. F. D. Monckton, Clerk.

Copy received this 20th day of May, 1916.

NATHAN H. FRANK,
IRVING H. FRANK,
Attys. for Defendants in Error.

49 United States Circuit Court of Appeals for the Ninth Circuit.

No. 2614.

PAUL SCHARRENBERG, Plaintiff in Error,

vs.

THE DOLLAR STEAMSHIP COMPANY, DOLLAR STEAMSHIP LINE, THE ROBERT DOLLAR COMPANY, Corporations, and JAMES ABERNETHY, Defendants in Error.

Certificate of Clerk U. S. Circuit Court of Appeals to Record Certified Under Section 3 of Rule 37 of the Rules of the Supreme Court of the United States.

I, F. D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing forty-eight (48) pages, numbered from and including 1 to and including (48), to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made and certified under section 3 of Rule 37 of the Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

50 Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City

of San Francisco, in the State of California, this twenty-ninth day of May, A. D. 1916.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

[United States internal revenue documentary stamp, series of 1914, ten cents, canceled May 29, 1916. F. D. M., Clerk.]

51 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which Paul Scharrenberg is plaintiff in error, and The Dollar Steamship Company, Dollar Steamship Line, The Robert Dollar Company, and James Abernethy are defendants in error, No. 2614, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the District Court of the United States for the Northern District of California, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States,

52 Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the seventh day of December, in the year of our Lord one thousand nine hundred and sixteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

53 [Endorsed:] File No. 25354. Supreme Court of the United States, October Term, 1916. No. 524.

Paul Scharrenburg vs. The Dollar Steamship Company et al.

Writ of Certiorari.

Docketed.

No. 2614. United States Circuit Court of Appeals for the Ninth Circuit.

Filed Dec. 16, 1916. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

54 United States Circuit Court of Appeals for the Ninth Circuit.

No. 2614.

PAUL SHARRENBERG, Plaintiff in Error,

vs.

THE DOLLAR STEAMSHIP COMPANY et al., Defendants in Error.

Stipulation of Counsel Relative to Return to Writ of Certiorari.

It is hereby stipulated, that the return to the Writ of Certiorari heretofore issued by the Supreme Court of the United States in the above-entitled cause, may be the certified copy of the Transcript in said cause, now on file in said Supreme Court of the United States.

Dated December 29, 1916.

J. H. RALSTON,
W. E. RICHARDSON, AND
H. W. HUTTON,
Attorneys for Plaintiff in Error.
NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys for Defendants in Error.

[Endorsed:] Stipulation of Counsel Relative to Return to Writ of Certiorari. Filed Dec. 30, 1916. F. D. Monckton, Clerk

55 United States Circuit Court of Appeals for the Ninth Circuit.

No. 2614.

PAUL SHARRENBERG, Plaintiff in Error,

vs.

THE DOLLAR STEAMSHIP COMPANY et al., Defendants in Error

Certificate of Clerk U. S. Circuit Court of Appeals to Stipulation of Counsel Relative to Return to Writ of Certiorari.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the next preceding page to be a full, true and correct copy of "Stipulation of Counsel Relative to Return to Writ of Certiorari," filed in the above-entitled cause on the 30th day of December, A. D. 1916, as the original thereof remains on file and of record in my office.

Attest my hand and the Seal of the said the United States Circuit

Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 30th day of December, A. D. 1916.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

56 United States Circuit Court of Appeals for the Ninth Circuit.

No. 2614.

PAUL SHARRENBERG, Plaintiff in Error,

vs.

THE DOLLAR STEAMSHIP COMPANY et al., Defendants in Error

Return to Writ of Certiorari.

By direction of the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, I, Frank D. Monckton, as Clerk of said Court, in obedience to the annexed writ of certiorari issued out of the Honorable the Supreme Court of the United States and addressed to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, commanding them to send, without delay, to the said Supreme Court the record and proceedings in the above-entitled cause, do attach to the said Writ and send to the said Supreme Court a certified copy of a "Stipulation of Counsel Relative to Return to Writ of Certiorari," in which said stipulation it is provided that the certified Transcript of the Record heretofore filed by the plaintiff in error in said cause in the said Supreme Court as a part of its petition for a Writ of Certiorari may be taken as the Return to the said Writ of Certiorari, the original of which stipulation was filed in my office on this thirtieth day of December, A. D. 1916.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 30th day of December, A. D. 1916.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

57 File No. 25354. Supreme Court U. S., October Term, 1916. Term No. 524. Paul Scharrenberg, Petitioner, vs. The Dollar Steamship Company. Writ of Certiorari and Return. Filed January 16, 1917.

2

No. [redacted] 192

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1915

PAUL SCHARRENBERG,
Petitioner,

vs.

THE DOLLAR STEAMSHIP COMPANY et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
and
BRIEF IN SUPPORT THEREOF
and
NOTICE OF TIME OF SUBMISSION.

To the United States Circuit Court of Appeals, for the Ninth Circuit.

J. H. RALSTON,
W. E. RICHARDSON,
H. W. HUTTON,
Attorneys for Petitioner.

Filed this.....day of June, 1916.

JAMES D. MAHER, Clerk.

By.....Deputy Clerk.

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No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1915

PAUL SCHARRENBERG,
Petitioner,

vs.

THE DOLLAR STEAMSHIP COMPANY et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI.

To the United States Circuit Court of Appeals, for the Ninth Circuit.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Paul Scharrenberg, respectfully petitions the court for a writ of certiorari to be directed to the United States Circuit Court of Appeals for the Ninth Circuit, to enable this honorable court to review the judgment and decision of said United States Circuit Court of Appeals, ren-

dered on the 14th day of February, A. D. 1916, affirming a judgment of the United States District Court for the Northern District of California, sustaining a general demurrer to a complaint filed by petitioner, in which he sought to recover penalties for a violation of the provisions of section 5 of the Act of Congress of February 20, 1907 (36 Stat. at Large, 263), commonly known as the *contract labor law*.

GENERAL REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

The general reasons relied on for the allowance of the writ applied for are as follows:

(a) It appears from the face of the complaint that the respondents, Dollar Steamship Companies, were operating at least one steamer, the "Bessie Dollar", between American ports and China. Having a steamer in China, they had an agent there in the person of the master of that vessel, and were thus in a position to contract with men in China, which another shipowner not so situated, would be unable to do, and would thus be unable to secure the cheap labor the respondent steamship companies could, and unfair competition with other steamship owners would result. The very purpose of the contract labor law as expressed by this honorable court is set aside by the decision of the learned United States Circuit Court of Appeals

herein, this court having said in the case of The Church of the Holy Trinity, 143 U. S. page 463:

> "The motives and history of the Act are matters of common knowledge. It had become the practice for large capitalists in this country to contract with their agents abroad for the shipment of great numbers of an ignorant and servile class of foreign laborers, under contracts, by which the employer, upon the one hand agreed to prepay their passage, while upon the other hand, the laborers agreed to work after their arrival for a certain time at a low rate of wages. The effect of this was to break down the labor market and to reduce other laborers engaged in like occupations to the level of the assisted immigrant. The evil finally became so flagrant that an appeal was made to Congress for relief by the passage of the Act in question, the design of which was to raise the standard of foreign immigrants, and to discountenance the migration of those who had not sufficient means in their own hands, or those of their friends, to pay their passage."

(b) Congress in its passage of the act in question in this case enumerated the following as classes and persons to whom it did not apply, to wit:

> "That skilled labor may be imported if labor of like kind unemployed cannot be found in this country. And provided further: That the provisions of this law applicable to contract labor *shall not be held to include professional actors, artists, lecturers, singers, ministers of any religious denomination, professors for colleges or seminaries, persons belonging to any recognized learned profession, or persons employed strictly as personal or domestic servants.*"

It is alleged in the complaint (page 7 of Transcript) that unemployed labor of a like kind could have been found in this country.

The learned Court of Appeals, however, held herein that the contract labor law does not apply to seamen; still seamen are not within any of the foregoing exceptions enumerated in the Act, and the service they perform, is clearly within the following language found therein.

Sec. 4 of the contract labor law, as follows:

> "Sec. 4. That it shall be unlawful for any person, company, partnership or corporation, in any manner whatsoever, to prepay the transportation or in any way to assist or encourage the importation or migration of any alien into the United States, in pursuance of any offer, solicitation, promise, or agreement, parole or special, express or implied, made previous to the importation of such alien to perform labor or service of any kind, *skilled or unskilled*, in the United States."

(c) While as we have shown the decision of the learned Circuit Court of Appeals permits the bringing of shipowners into unfair competition, it also brings seamen of the United States into unfair competition with the pauper labor of Asia.

(d) The bringing into the country of Chinese as permitted by the decision of the learned Circuit Court of Appeals is a direct violation of the Chinese Exclusion Act.

SUMMARY STATEMENT.

The British steam vessel "Bessie Dollar", owned and operated by the respondents and defendants, other than James Abernethy, who was in their employ as master of said vessel, was lying in the Port of Shanghai, in China, with a full complement of officers and crew on board, each of whom had signed shipping articles for a voyage from that port, and at that time the other respondents were the owners and operators of an American steam merchant vessel, named the "Mackinaw"; whereupon the master of the "Bessie Dollar", at the instigation of the other respondents, procured a crew of Chinese persons at said Shanghai to serve on the "Mackinaw", which vessel was in the United States. Apparently not desiring to transport such crew for the "Mackinaw" as passengers, assuming that the "Bessie Dollar" was a passenger vessel and licensed to carry passengers, the subterfuge was adopted to ship the said Chinese persons as seamen on the said "Bessie Dollar", and thereupon they were procured to enter into a written contract of claimed shipment as seamen, on a designated voyage as follows (Transcript page 5):

> "On voyages from Shanghai to San Francisco, *there to join the S. S. 'Mackinaw'*, or any other vessel, within the limits of 70 degrees north and 70 degrees south latitude, trading to and from as may be required, and back to Shanghai, to be discharged with consent of the local authorities. Term of service not to exceed two (2) years. The master has the option to transfer any or all of the within mentioned

> persons to any other British or foreign ship bound to Shanghai in the same capacity and at the same rate of wages."

The plain scope of that contract was for the signers, each of whom was a Chinese and an alien, to leave a foreign country on a British vessel, come to the United States, leave the British vessel and join an American vessel within the United States, sail on the latter vessel between ports of the United States if the master of the American vessel so desired, as the contract is broad enough to cover any voyage, keep in such service for two years if desired by such master and then be returned to Shanghai either in the "Mackinaw", or some other vessel as the master of the "Mackinaw" might determine.

The men in question were brought by all of the respondents to San Francisco, in the State of California, on the "Bessie Dollar", at which latter place they were paid off, and then taken before the United States Shipping Commissioner for the Port of San Francisco, and they each thereupon signed shipping articles, the voyages and term of service being therein described as follows:

> "From San Francisco, Cal., to Shanghai, China, and such other Asiatic ports as the master may direct, via Grays Harbor, Seattle, Wash., and such other ports on the Pacific Coast as the master may direct; final port of discharge shall be Shanghai, China."

Under that contract the men in question could be held to serve on coasting voyages on the Pacific

Coast of North America for the period of two years, and then, under the terms of their original contract, either be taken back to Shanghai on the "Mackinaw" or be sent back in some other vessel.

It appears in the record (page 6), that the men in question went on board the "Mackinaw" pursuant to the aforesaid contracts, worked on her in San Francisco, California, and Grays Harbor, Washington, and were still working on her at the time of the filing of the complaint.

It appears in the complaint that it was the intention of respondents to bring such aliens and contract laborers within the United States, there to perform labor and that that actuated them in entering into the contracts. It is also alleged in the complaint that the men *in question were not needed to work the "Bessie Dollar" on the voyage from Shanghai.* That, and all the allegations of the complaint, must, on demurrer, be taken as true, and it leads to the indisputable conclusion that they *were not bona fide seamen* on that vessel, and that the contract made in Shanghai was colorable and made for the express purpose of endeavoring to evade the terms of the contract labor law, which also led to a violation of the Chinese Act.

The learned Court of Appeals, however, held in its opinion *that the contract labor law was not intended to apply to seamen* (pages 33 to 43 of Transcript). A petition for a rehearing was filed March 3, 1916, and denied on May 8, 1916.

Of course, if the Dollar Steamship Companies can bring in Chinese seamen to man their American vessels, other vessel owners will be compelled to do likewise by some means or other, or suspend business on account of unfair competition. If they bring in such men to meet such competition the result will be that all American vessels will ultimately be operated with Chinese crews, and it has been held that vessels so manned are unseaworthy.

PETITIONER'S BRIEF IN SUPPORT OF HIS PETITION.

I.

THE ACTS IN QUESTION HERE WERE A DIRECT VIOLATION OF THE CONTRACT LABOR LAW.

The contract labor law, now a part of the Immigration Act, was first passed in 1885. It has been amended several times. The parts applicable to this case, however, read as follows (36 Stat. 263):

Sec. 2:

> "That the following classes of aliens shall be excluded from admission into the United States. All * * * persons hereinafter called contract laborers who have been induced or solicited to migrate to this country by offers of employment or in consequence of agreements, oral, written or printed, expressed or implied, to perform labor in this country of any kind, skilled or unskilled, * * * That skilled labor may be imported if labor of like kind unemployed can not be found in this country: *And provided further*, that the provisions of this law applicable to contract labor shall not be held to exclude professional actors, artists, lecturers, singers, ministers of any religious denomination, professors for colleges or seminaries, persons belonging to any recognized learned profession, or persons employed strictly as personal or domestic servants."

Sec. 4 of the Act reads:

> "That it shall be a misdemeanor for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation or in any way to assist or encourage the importation or migration of any contract laborer or contract laborers into the United States, unless such contract laborer or contract

laborers are exempted under the terms of the last two provisos contained in section two of this Act."

Sec. 5 reads:

"That for every violation of any of the provisions of section four of this Act the person, partnership, company, or corporation violating the same, by knowingly assisting, encouraging, or soliciting the migration or importation of any contract laborer into the United States shall forfeit and pay for every such offense the sum of one thousand dollars, which may be sued for and recovered by the United States, or by any person who shall first bring his action therefor in his own name and for his own benefit, including any such alien thus promised labor or service of any kind as aforesaid, as debts of like amount are now recovered in the courts of the United States; and separate suits may be brought for each alien thus promised labor or service of any kind as aforesaid. And it shall be the duty of the district attorney of the proper district to prosecute every such suit when brought by the United States."

Sec. 7 reads:

"That no transportation company or owner or owners of vessels, or others engaged in transporting aliens into the United States, shall directly or indirectly, either by writing, printing, or oral representation, solicit, invite, or encourage the immigration of any aliens into the United States, but this shall not be held to prevent transportation companies from issuing letters, circulars, or advertisements, stating the sailings of their vessels and terms and facilities of transportation therein; and for a violation of this provision, any such transportation company, and any such owner or owners of vessels,

> and all others engaged in transporting aliens into the United States, and the agents by the employed, shall be severally subjected to the penalties imposed by section five of this Act."

Sec. 33 of the Act reads:

> "That for the purpose of this Act the term 'United States' as used in the title as well as in the various sections of this Act shall be construed to mean the United States and any waters, territory, or other place subject to the jurisdiction thereof, except the Isthmian Canal Zone, *Provided*, That if any alien shall leave the canal zone and attempt to enter any other place under the jurisdiction of the United States, nothing contained in this Act shall be construed as permitting him to enter under any other conditions than those applicable to all aliens."

Seamen are not within the exceptions, and the rule of statutory construction in the case of exceptions is clear and well understood. This court has defined what it is. We quote from Kendall v. United States, 107 U. S. 123:

> "125. And that there might be no misapprehension as to the intention of Congress, the statute, after enumerating the cases to which the limitation of six years shall not apply, declares that 'no other disability than those enumerated shall prevent any claim from being disbarred.' *The court cannot superadd to those enumerated*, a disability arising from the claimant's inability to truthfully take the required oath. *It has no more authority to engraft that disability upon the statute* than a disability arising from sickness, surprise, or inevitable accident, which might prevent a claimant from suing within the time prescribed."

The language in this statute is general, with exceptions, the rule under such a statute is clearly stated in Lewis Sutherland Statutory Construction, 2 Ed., Sec. 494:

> "An express exception, exemption or saving excludes others. Where a general rule has been established by statute with exceptions the court will not curtail the former nor add to the latter by implication. * * * The expression of one thing is the exclusion of another; and consequently no further exception was intended."

And also in Wabash R. R. Co. v. United States, 101 C. C. A. 133:

> "But the power was conferred and the duty was imposed upon the members of Congress, and not upon the courts, to determine whether or not these exceptions to the express terms of the proviso should be made. They did not make them, *and that fact raises a conclusive presumption that they did not intend to make them, and it is not in the province of the courts to do so.* * * * (many cases cited.)

There was no extension of exceptions in the case of The Church of the Holy Trinity, 143 U. S. 457.

In that case the Reverend Mr. Warren was employed in England under contract in September, 1887, to come to the United States and perform religious services. Subsequent to his arriving here and entering upon his services, proceedings were commenced that led to a decision that the law had been violated and the matter finally reached this court. At that time the section of the law of 1885 applicable read:

"That from and after the passage of this act it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation, or in any way assist or encourage the importation or migration of any alien, or aliens, and foreigner or foreigners, into the United States, its Territories, or the District of Columbia, under contract or agreement, parole or special, express or implied, made previous to the importation or migration of such alien or aliens, foreigner or foreigners, to *perform labor or service of any kind* in the United States, its Territories, or the District of Columbia."

This court said (page 462):

"Among other things which may be considdered in determining the intent of the legislature is the title of the act. * * * 463. Now, the title of this act is, 'An act to prohibit the importation and migration of foreigners and aliens under contract or agreement to *perform labor* in the United States, its Territories and the District of Columbia. Obviously, the thought expressed in this *reaches only to the work of the manual laborer as distinguished from that of the professional man.* No one reading such a title would suppose Congress had in its mind any purpose of staying the coming into this country of ministers of the gospel, or, indeed, of *any class whose toil is that of the brain. The common understanding of the term labor and laborers does not include preaching and preachers;* and it is to assume that words and phrases are used in their ordinary meaning. *So whatever light is thrown upon the statute by the language of the title* indicates an exclusion from its penal provisions of all contracts for the employment of ministers and pastors."

> "A singular circumstance, throwing light upon the intent of Congress, is found in the extract from the report of the Senate Committee on Education and Labor, recommending the passage of the bill. * * * The committee, however, believing that the bill in its present form will be construed as including only *those whose labor or service is manual in character,* and being desirous that the bill become a law before the adjournment, have reported the bill without change."

Thus the Act of 1885, by its terms, only included those performing manual labor, which a minister of the gospel does not do.

We submit that the court was without power to add to the exceptions specified by Congress.

In the case of United States v. Parsons, 66 C. C. A. 129, the lower court held that the law in question did not apply to farmers.

The learned Court of Appeals, Judges Lurton, Severens and Richards presiding, properly said, page 132:

> "The statute under consideration was adopted for a wise purpose, and ought not to be whittled away by a process of judicial construction. It contains specified exceptions and they ought not to be extended without good reasons."

Seamen are a part of the body politic; they are a very essential requisite in commerce and in the defense of the nation in times of war, and we think this case is one of great national importance, as it not only affects ships, but also sailors. The

merchant marine has hitherto made experienced sailors; there is and has been no other school; from them develop all of the masters and other officers of vessels, without the opportunity of men first serving as seamen on merchant vessels. There will be no opportunity of obtaining officers for them. The men in this case were shipped to work on coasting voyages in part, and under the decision of the court herein, there will be nothing to prevent any shipowner from bringing Chinese to this country, and manning every vessel in the coasting trade with them. The courts have held that a vessel so manned is unseaworthy; the result of such importations will result in giving us a merchant marine of unseaworthy ships. Again to the merchant marine we have always looked in the past for sailors to man our warships. The hardships hitherto suffered by sailors on American merchant vessels, greater than those of any other nation, has produced the condition that our war vessels are about one-third manned; as we have no American sailors, in the event of war they would be one-third manned. It is possible that the glamor of war might induce some few to enlist, but it is doubtful if our navy would ever be made more than half-manned, even with that stimulus to enlistment. If all our merchant ships can be manned with Chinese, where are we to get our sailors and officers for vessels?

Why, again, should seamen as a class be brought into direct competition with Asiatics when no other

class are? *Congress has not in the statutes said they should be*, and why should the exceptions in the statute be extended against them when they are extended against no other class?

II.

THE BRINGING OF THE MEN IN QUESTION TO THIS COUNTRY AND PLACING THEM ON AN AMERICAN VESSEL MADE THEM AMERICAN SEAMEN.

In the case of In re Ross, 140 U. S. 453, this court says, on page 472:

> "The national character of the petitioner for all the purposes of consular jurisdiction, was determined by his enlistment as one of the crew of the "Bullion". By such enlistment he became an American seaman—one of an American crew on board of an American vessel—and as such entitled to the protection and benefits of all the laws passed by Congress on behalf of American seamen, and subject to all their obligations and liabilities."
>
> (Page 479.) "This rule that the vessel being American is evidence that the seamen on board are such is now an established doctrine of this country, and in support of it there is with the American people no diversity of opinion and can be no division of action."

In the case of Wilson v. McNamee, 102 U. S. 572, this court says, on page 574:

> "A vessel at sea is considered as a part of the territory to which it belongs when at home. It carries with it the local legal rights and legal

jurisdiction of such locality; all on board are endowed and subject accordingly."

Caapo v. Kelly, 16 Wallace 625;

The case of the Chinese waiter, 13 Fed. Rep. 286;

In re Ah Tie, 13 id. 291.

Under those decisions the Chinese in this case were in the United States, when on the "Mackinaw", in violation of the Exclusion Act. In addition to that, they became entitled to all of the rights of American seamen, some of them being as follows:

Under Section 4507 of the Revised Statutes, a Chinese sailor has the right to be shipped, and paid off in the office of the Shipping Commissioner, necessitating a landing for that purpose.

Under Section 4508 he has the right of having his name placed on a register to be kept by the Commissioner.

If he is a minor he has the right, with the consent of the master or owner of the vessel, and they have the right, to demand assistance of the Shipping Commissioner in apprenticing Chinese boys on American vessels.

Under Section 4510, the master must take such Chinese boy ashore and before the Commissioner before he takes him to sea, at any time under a penalty of not more than one hundred dollars.

Under Section 4514, the master is bound to violate the provisions of the Contract Labor law, by entering into an agreement with an alien, if such he be, to perform service on American territory.

Under Section 4515, the master is liable to a penalty of not more than two hundred dollars, if he fails to violate the Contract Labor law, and he is liable to a penalty of one thousand dollars under the latter law if he does violate it.

Under Section 4517, all the rules and laws relating to Shipping Commissioners are made applicable to Consuls, etc., when the crew is shipped before him.

Under Section 4523, all shipments of seamen made contrary to *any Act of Congress* shall be void.

Under Section 4526, the seamen in question in this case, having shipped on the "Mackinaw" at San Francisco, were entitled in case of wreck of the vessel to be returned to San Francisco at the expense of the United States.

Under Section 4527 he would be entitled to go to court, in the event that he was discharged before one month's pay was earned.

Under Section 4546 he would be entitled to go before a judge if his wages are not paid.

Under Section 4554 he would be entitled to go before a Shipping Commissioner and have any question concerning him and his vessel arbitrated.

If the vessel is unseaworthy he has the right to be discharged in the United States, under Section 4561.

Under Section 4567, he has the right to go ashore and make a complaint.

Under Section 4576, the crew in question in this case were entitled to be returned to the United States, and the master of the vessel was bound to give a bond for their return.

If any of the seamen in question in this case became destitute in a foreign country it would be the duty of the Consul to send them to some port of the United States, under Section 4577, Revised Statutes.

See, also, Sections 4578, 4579, 4580.

Under Section 4581, one of these seamen had the absolute right to be returned to the United States.

In case of sale he had the same right under Section 4582.

See, also, Section 4583.

In the event of sickness, any seaman whatever on board of an American vessel is entitled to entry in the United States Marine Hospital.

It will thus be seen that the ruling in this case gave the men in question the absolute right to remain in the United States, and be there returned in case of discharge in a foreign country.

THE DECISION CITED BY THE LEARNED COURT OF APPEALS IN SUPPORT OF ITS JUDGMENT AND DECISION ARE NOT IN POINT.

Each case, other than that of the Holy Trinity Church, was a case where a *foreign vessel*, with a bona fide crew on board, was lying in the United

States, and one of the crew, against proper precautions by the master, escaped, and it was sought to enforce a penalty therefor.

Each case was decided under an entirely different section of the law, and the law has been amended several times since each case was decided.

Taylor v. U. S., 152 Fed. Rep. 1.

There is no question of landing involved in this case. The point involved is the making of a contract in a foreign port and facilitating the transportation of a *contract laborer*. Permanent residence is no longer important. It was said by this court in Taylor v. U. S., 207 U. S. 120-126:

> "A reason for the construction adopted below was found in the omission of the word 'immigrant' which had followed 'alien' in the earlier acts. No doubt that may have been intended to widen the reach of the statute, but we see no reason to suppose that the omission meant to do more than to avoid the suggestion that no one was within the act who did not come here with intent to remain."

In the case of Grant Bros. v. The United States, 232 U. S. 647, several of the men complained of were in the United States but a few days, still the judgment imposing the penalties was sustained by this court.

The case of U. S. v. Sandrey, 48 Fed. 550, was a case where a bona fide sailor escaped, and the court intended that decision to apply to that case and no other, as shown by the following language, page 553:

> "We are not dealing with a case where a vagrant sailor has been brought to this country and discharged in a destitute condition, nor with a case where the master of a vessel has connived with an immigrant within the objectional classes to smuggle him into this country *under cover of shipping articles.*"

There was certainly a smuggling of the prohibited classes into this country *under cover of shipping articles* in this case.

The case of U. S. v. Burke, 99 Fed. 895, was a case where a sailor escaped from a foreign ship; he went back on board the vessel again, promised to stay, and the master undoubtedly thought, and had the right to think, that he would stay. It was decided under the law of 1891. He escaped again, however, and the vessel was fined $300.00, which the master refused to pay, was denied clearance, and obtained a writ of mandamus to compel clearance. The law at that time read:

> "Sec. 6. That any person who shall bring into *or land* in the United States by vessel or otherwise, *or who shall aid* to bring into *or land* in the United States by vessel or otherwise, any alien not lawfully entitled to enter the United States, shall be deemed guilty of a misdemeanor, and shall, on conviction, be punished by a fine not exceeding one thousand dollars, or by imprisonment for term not exceeding one year, or by both such fine and imprisonment."

The master of that vessel had not landed the sailor, and the man in question in that case was undoubtedly entitled to come into the United States as a part of a bona fide crew of his vessel. The com-

plaint was that the master had *landed him*, which he certainly had not. *The contract labor* parts of the Act were not even indirectly involved in that case.

There is a wide distinction in the cases; the law has since been amended, and Judge Toulmin, in that case, *passing on a similar state of facts to what exists in this case, said* (page 899):

> "I have carefully considered the ruling of the assistant secretary of the treasury in the case of the crew of the 'Lancashire', which may be justified by the facts in that particular case, as they existed, and as they were doubtless made known to him. In that case the vessel which had been partly wrecked on the coast of Jamaica and partially restored there, and had changed flags, came to Mobile for docking and more complete repair; there to load a cargo for foreign trade. She had shipped at Kingston, *besides the ordinary crew usually required on vessels of her class*, a large number of additional men, who desired to come to the United States, and who were engaged at Jamaica to come to Mobile at a wage of one shilling per month each, to work chiefly at pumping the leaking vessel, and to be discharged; an absurdly small wage for the men.
>
> Under such facts as existed in that case, these men, so working their passage at the equivalent of 25 cents for the month, but who were actually paid $5 each for the month's service (where the ordinary wages were $15 per month), and who stipulated for discharge here in the United States, were plainly immigrants, and properly treated as such, and therefore properly deported under the ruling of the secretary, and they, not because at all under the immigration laws, *but because they were not a bona fide crew of the ship.*"

The facts in this case, with the exception of the wages not here being mentioned, are identical with that case, and the wages are immaterial.

In Treasury Decision No. 21724, the "Lancashire" case, the Treasury Department said, on the foregoing facts:

> "If a contrary view were taken you will readily see that, by collusion with shipowners, or masters of vessels, it would be quite possible to effect the landing of aliens who are forbidden by law to come to this country *simply through the device of signing them for the inward trip.*"

It would seem that was what was done on the "Bessie Dollar".

We now respectfully call the court's attention to other parts of the decision of Mr. Beck, Acting Attorney General, portions of which are quoted in the opinion herein.

Following such quotation is the following:

> "It is important, however, to remember that the salutory immigration statutes cannot be defeated by intending immigrants shipping as sailors. Judge Toulmin recognized this in the decision referred to by expressly approving the ruling of your Department in the case of the Lancashire'. *Aliens who become seamen on vessels for the purpose of securing an entrance into this country free from the barriers of the immigration statutes are none the less alien immigrants, and can be treated as such.* In my judgment it is not important whether the master of the vessel who ships them was in collusion with them, or knew of their purpose to escape. Only such seamen are excepted from the class of passengers upon whom the head money tax

is imposed, and from the class of alien immigrants, as are seamen in good faith and have no intention by reason of their passage to this country to leave the ship and make entry into this country."

Further, from Mr. Beck's opinion:

"*It does not follow because aliens are seamen* that they are free from such examination and inspection as you have either required or may hereafter require by regulation. By the immigration statutes Congress intended to exclude undesirable immigrants from entrance to this country, and the law should be interpreted so as to effectuate this object."

We also respectfully submit the following opinion of former General Commissioner of Immigration E. P. Sargent:

"MEMORANDUM.

"No. 11,983-C.

"*In re Transfer Chinese Seamen.*

"The Bureau does not think the opinion of the Solicitor, or the authorities he cites in support thereof, exactly meet the issue presented. It is quite true that the Attorney General held that the transfer of certain Chinese seamen, in the port of San Francisco, to the 'Korea' for service on the outgoing initial voyage of that vessel did not, as the said seamen had been signed in Hongkong for a round trip on some vessel or vessels of the Company to which the 'Korea' belonged, conflict with the Chinese Exclusion Laws or the Alien Contract Labor Laws. The judicial authorities quoted by the Attorney General in that opinion, as well as in a subsequent one affirming it, were constructions of the status of Chinese seamen, under the provisions of the Chinese exclusion and Immigra-

tion laws (See *In re Moncan*, 14 F. R., 44; *U. S. v. Burke*, 99 Fed. Rep. 895; 23 Op. Atty. Genl., 520).

"The principles laid down in these cases may, therefore, as the Solicitor suggests, be conceded as settled for the present at least. The Bureau understood, when it prepared Rule 16 of the Chinese regulations of July 27, 1902, that it gave expression to those principles. As a result, any Chinese seaman, lawfully coming on a vessel to any port of the United States, may go ashore, under proper and reasonable restrictions, for shore leave or for the purpose of again signing as a member of the crew of some other vessel than the one by which he came, just as seamen of any other race may, anything in the Chinese Exclusion laws to the contrary notwithstanding. This the Bureau has not understood to be a disputed proposition for some time.

"The question now offered for solution is quite another one, and involves as a dependent proposition the status of Chinese seamen brought to the ports of the United States as crews of vessels of domestic register.

"It will doubtless be conceded that, if a Chinese seaman's position at the time of his arrival at any of our ports is in violation of law, such arrival can not be used as the means of establishing a lawful status for him. In other words, if the deck of an American vessel is American territory within the meaning of the Chinese Exclusion laws, a Chinese seaman thereon brought to our shores can not claim the right to shore leave therefrom or to a landing to re-embark either on an American or a foreign vessel. The principle upon which this conclusion is based is too fundamental, too primary, in our system of jurisprudence and has been too frequently affirmed by the text writers and the courts to require the support of cita-

tions of authorities. Hence, the actual issue presented for administrative ruling is whether the deck of a vessel of domestic register is territory of the United States, which Chinese laborers are forbidden to enter. Upon the determination of this issue depends the nature of the reply to be made to the request of the Pacific Mail Steamship Company for permission to transfer at San Francisco 207 members of the Chinese crew of its 'Siberia' to its new vessel, the 'Manchuria,' to act as the crew thereof.

"There are various judicial authorities bearing directly, by fair if not necessary implication, upon the point presented, and at least one case which has not been overruled and which apparently determines it authoritatively. It was assumed in that case that a Chinese seaman is a laborer both in the popular and reasonable sense of that word and within the meaning and intent of the Chinese Exclusion laws, but it was declared that the time within which a departing Chinese laborer might return to the United States, without complying with certain requirements of the law then in force, did not run against the Chinese seaman who had been absent on an American vessel for a longer period—not because such a seaman is not a laborer, as seems to be held by the authorities cited in the Solicitor's opinion, but because in contemplation of law such seamen had never left American soil. The Court said:

"'A person shipping on an American vessel as one of the crew is within the jurisdiction of the United States. An American vessel is deemed a part of the territory of the State within which its home port is situated, and as such a part of the territory of the United States. While on board an American vessel

a Chinese laborer is within the jurisdiction of the United States, and does not lose by his employment the right of residence here.'

"In re Ah Sing, 13 Fed. Rep., 286.

"Are the 'Siberia' and the 'Manchuria' not, under this ruling, American territory—by fiction of law the State of California—wherever they go? Would not a registered Chinese laborer, who had left the physical soil of this country as a seaman, without complying with any of the requirements of law as to *departing* laborers, as a member of the 'Siberia's' crew, for instance, be entitled to admission on his return and to residence in this country? But if he had left the United States as a seaman on board of a vessel of foreign register, without securing a return certificate, it seems clear that he would have forfeited his rights as a lawful resident and duly registered laborer and upon his return would be relegated to the inferior and limited rights of a mere Chinese seaman engaged in the pursuit of his regular avocation.

"See Sec. 7, Act of Sept. 13, 1888; Rule 16, Dept. Circ., July 27, 1903.

"Incidentally it may be well to consider the opinion of the Attorney General, Judge Ross, in the case of U. S. v. Ah Fawn (57 Fed. Rep., 591), and an affirmation of decision by the U. S. Circuit Court of Appeals in a recent California case, all in effect holding that the Exclusion laws operate against all Chinese persons not specifically excepted from their provisions. If then, as the courts have held, a Chinese seaman is a laborer, and if also one lawfully in the United States does not lose his right of residence therein when he leaves this country without a return certificate, provided he remains on board an American vessel; by what

juggling of the rules of reason and common sense or with color of legislation or judicial authority can it be argued that a Chinaman who can not enter other territory of the United States, can freely engage as a laborer on its constructive territory, and once thereon acquire a sort of vested right as seaman to use our harbors to transfer to other American vessels? The Bureau can not by any sophistry blind itself to the clearly avowed purpose of the law, and it has no hesitancy therefore in stating as its opinion—with which it knows of no conflicting executive or judicial authority—that no Chinaman, not entitled to enter the United States or reside therein can lawfully engage as a seaman on a vessel of American register, or, if so engaged, can lawfully transfer in our ports to another vessel of American register. It follows naturally from this view, that the Bureau further holds that Chinese seamen coming to our ports on vessels of foreign register, while entitled as seamen to land and engage on other vessels of foreign register for outward voyages, as Chinese laborers can not when so landed engage as seamen on American bottoms.

"The request of the Pacific Mail Steamship Company, should, in view of the foregoing reasoning be denied.

Respectfully,

"(sgd) E. P. SARGENT,
Commissioner-General."

"WW.

Section 32 of the Act of 1907 gives the Commissioner General of Immigration power *to establish rules not inconsistent with law.* Rules have been established. If those rules gave the right to perform acts such as were performed in this case, which we deny they do, they would be void.

The rules apply to *incoming bona fide seamen,* who have shipped in good faith on some vessel, and whose contract has terminated in the United States, by lapse of time, or some other unforeseen circumstance. By the terms of the rules themselves they are inapplicable to this case, Sub. 1 of Rule 10 reading:

> "*Who are seamen.*—(a) A seaman is any person employed to serve on board a vessel, whose employment is necessary to commerce and navigation and whose name appears on the ship's articles."

The men in question in this case were not necessary to commerce and navigation on the "Bessie Dollar".

It clearly appears from the authorities cited in the decision of the learned Circuit Court of Appeals that they were decided under an entirely different state of facts and sections of the law than appears in and are applicable to this case; that each contains a reservation as to its general applicability, and that of necessity there is a very wide difference between a case where a seaman is a part of a bona fide crew of a foreign merchant vessel and escapes, and this case, where the respondents deliberately went to a foreign country and contracted with and brought men to this country with the intent for such men to perform work and labor herein, and particularly where the men had no right to come to this country at all.

In the case of U. S. v. Taylor, 207 U. S. 120, this court said on page 127:

> "Of course it is possible for a master unlawfully to permit an alien to land, even if the alien is a sailor."

We respectfully submit that the petition herein should be granted.

Dated, San Francisco,
June 7, 1916.

J. H. Ralston,
W. E. Richardson,
H. W. Hutton,
Attorneys for Petitioner.

To the respondents in the above entitled cause, and to Nathan H. Frank and Irving H. Frank, attorneys for said respondents:

You will please take notice that the foregoing petition will be submitted to the Supreme Court of the United States upon the said petition, the foregoing papers and brief, and the transcript of record, on Monday, the 26th day of June, A. D. 1916, at the opening of said court in the forenoon of that day, at its court room, in the City of Washington, District of Columbia.

Yours, etc.,

J. H. Ralston,
W. E. Richardson,
H. W. Hutton,
Attorneys for Petitioner.

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IN THE

Supreme Court

OF THE

UNITED STATES

OCTOBER TERM, 1916.

PAUL SCHARRENBERG,
Petitioner,

vs.

THE DOLLAR STEAMSHIP CO., *et al.*,
Respondents.

No. 524 19

MOTION TO ADVANCE CAUSE

AND

NOTICE OF TIME OF SUBMISSION.

J. H. RALSTON,
W. E. RICHARDSON,
H. W. HUTTON,
Attorneys for Petitioner.

Filed this.....day of April, 1917.
JAMES D. MAHER, Clerk.

By.....Deputy Clerk.

IN THE

Supreme Court

OF THE

UNITED STATES

October Term, 1916.

PAUL SCHARRENBERG,
Petitioner,

vs.

THE DOLLAR STEAMSHIP CO., et al.
Respondents.

No. 524

MOTION TO ADVANCE CAUSE.

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner Paul Scharrenberg respectfully petitions for an order of the Honorable Court advancing the above-entitled cause on the Calendar and shows the following reasons therefor:

The facts in said cause are: That on the 3rd day of December, A. D. 1913, the British steam vessel *Bessie Dollar* was lying at Shanghai in China, with a full complement of officers and men on board, whereupon the vessel's master contracted in writing with an additional number of men to go on board said vessel as purported

seamen and proceed on her to San Francisco, in the State of California, there to join an American merchant vessel known, named and called the *Mackinaw*, and that pursuant to such contract the men so contracted with proceeded to said San Francisco, and there joined the said *Mackinaw* and worked on board of her as such seamen in the Port of San Francisco, and elsewhere.

The action being to recover penalties for a violation of the law commonly called the contract labor law.

A writ of Certiorari was granted by this Honorable Court to be issued to the United States Circuit Court of Appeals for the Ninth Circuit, on December 4th, 1916, return has been made to said writ, but in the ordinary course of this Court's Calendar, it is likely that said cause will not be reached until sometime in the year 1918.

Petitioner believes this cause to be of great public importance, as since the rendition of the judgment herein by the learned Circuit Court of Appeals for the Ninth Circuit, other shipowners have contracted with Chinese aliens in China, and brought such aliens to the port of San Francisco as passengers and there caused them to disembark and join American vessels and serve as seamen thereon.

Your petitioner respectfully shows, that such practice if continued will lead to the great im-

pairment of the American merchant marine, that it is to the interest of all nations that its ships should be manned by its own race, so that in the event of strife with other countries sufficient of its own race will be available to man its vessels of war, and that whether such strife exists or not the interests of a country are always best subserved when its merchant vessels, whose decks are a part of its territory, are manned by people who owe individual allegiance to it.

Petitioner further respectfully represents, that the safety of the lives of passengers and others on board of merchant vessels when upon the high seas, is more certain when manned by people of the vessel's country, than when manned by Asiatics, and that the practice of bringing Chinese persons to this country as was done in this case discriminates against shipowners who are unable so to do, and against American sailors, all of whom are vitally interested in the results of this case.

That prior to the rendition of the opinion herein by the said learned Court of Appeals, it was the practice of ship owners to do as was done in this case, ship sailors as purported seamen on vessels on which they were not needed and transship them in American ports, the result of all of which was to create competition between those who otherwise might have become sailors with Asiatics who worked for about $8.00 per month,

the result of [illegible] which was that persons of American birth would not go to sea, and now when this country is in a greater need of sailors than ever before in its history, we have no sailors.

Petitioner respectfully states that the penalties he seeks to enforce in this case lead up to the larger, the more vital principle, of the proper American policy for the manning of its merchant marine.

Petitioner therefore respectfully asks that this case be advanced to some day convenient to the Court, other than the day on which it would in the regular call of the calendar be heard.

And petitioner will ever pray.

JACKSON H. RALSTON,
W. E. RICHARDSON,
H. W. HUTTON,
Attorneys for Petitioner.

The Respondents in the above-entitled cause and their attorneys will please take notice:

That the within motion to advance cause will be presented to the Supreme Court of the United States, at the opening of said Court, on Monday, the 14th day of May, A. D. 1917, at the court-room of said Court, Washington, D. C.

Yours, etc.,
JACKSON RALSTON,
W. E. RICHARDSON,
H. W. HUTTON,
Attorneys for Petitioner.

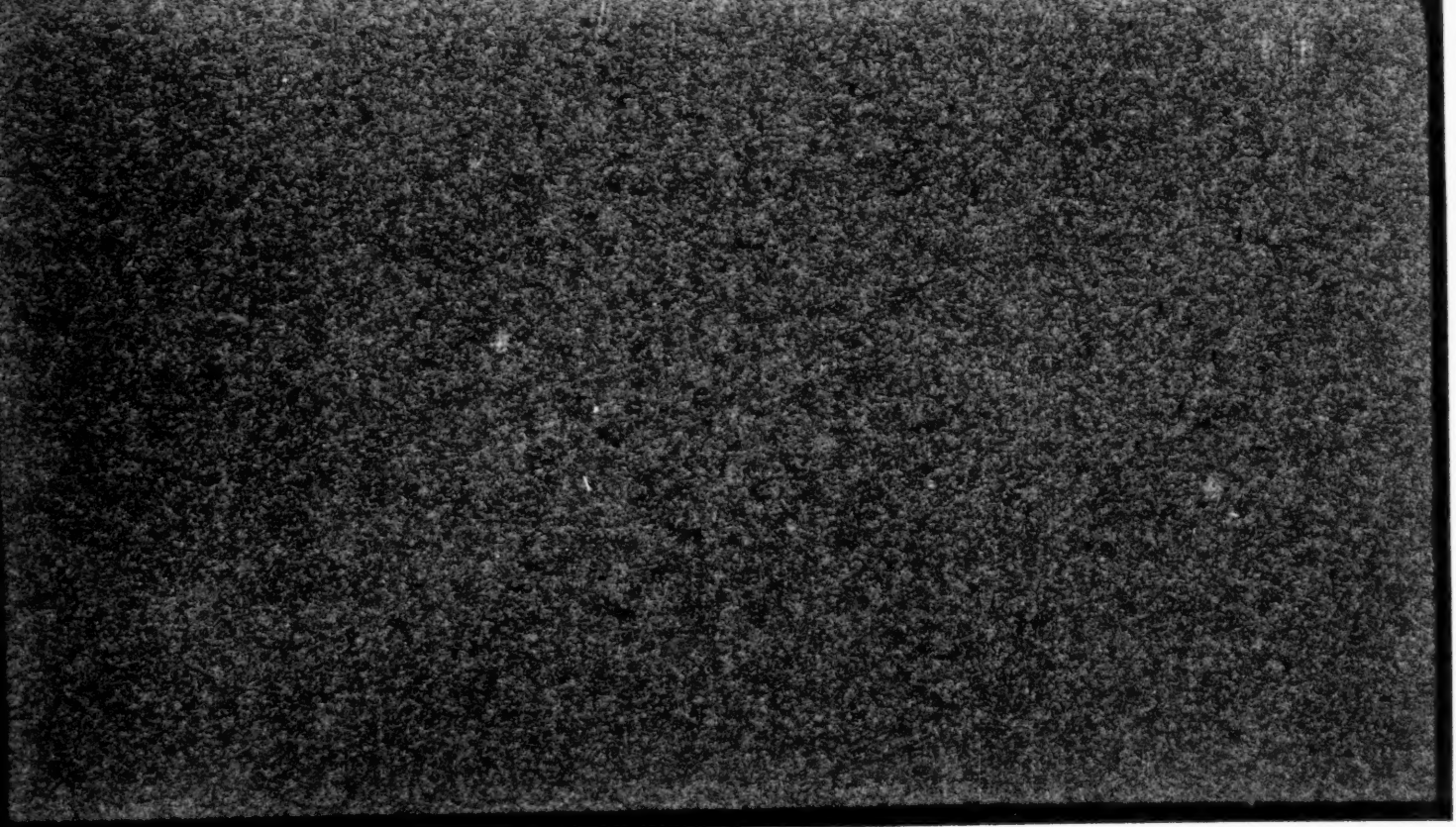
Due service and receipt of a copy of the within is hereby admitted this.....day of April, 1917.

.....

.....

Attorneys for Respondents.

Brunt Press, S. F.



IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 524.

PAUL SCHARRENBERG, PETITIONER,

vs.

THE DOLLAR STEAMSHIP CO. ET AL., RESPONDENTS.

OPPOSITION TO MOTION TO ADVANCE CAUSE FOR ARGUMENT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The respondents, the Dollar Steamship Company *et al.*, hereby respectfully oppose the motion for an order of this honorable court to advance the above-entitled cause on the calendar, and show the following reasons therefor:

I. This action was originally brought in the District Court of the United States for the First Division of the Northern

District of California. Judgment was given for the respondents on demurrer. On appeal the United States Circuit Court of Appeals for the Ninth Circuit affirmed the judgment of the lower court in a decision rendered February 14, 1916. On June 7, 1916, a petition for a writ of certiorari was filed by the petitioner herein, but no haste was then manifested by the petitioner to expedite this cause, for it was not until November 20, 1916, that the petition for a writ of certiorari was submitted to this court and after the petitioner had been served with notice by the respondents that a motion to dismiss the petition for want of prosecution would be filed unless the petition was submitted on or before December 4, 1916. This lack of diligence on the part of the petitioner does not comport with his present haste, and would seem to warrant this honorable court in questioning the advisability of granting the order to advance the cause at this time.

II. The reasons assigned by the petitioner for asking for this order to advance, to wit, that ship owners have and are contracting with Chinese aliens in China to come to the United States and join American vessels to serve as seamen thereon; that such practice will lead to impairment of the American merchant marine; that the safety of the lives of passengers on vessels thus manned by aliens is imperiled, and that the employment of such aliens on American vessels is a discrimination against ship owners who do not employ aliens, and against American sailors, are all matters for the consideration of Congress and not for this honorable court, being questions of a political rather than of a judicial nature. If, as the petitioner alleges, this country is in greater need of sailors than ever before and has no American sailors available, then foreign sailors would be a necessity in order to keep the ships in service. This, therefore, is a matter clearly for the cognizance of Congress and not of this honorable court.

III. The motion is not opposed by the respondents for the purposes of delay, but that the orderly course of justice may be pursued and the substantial rights of the respondents preserved.

NATHAN H. FRANK,
IRVING H. FRANK,
WALTER S. PENFIELD,
Attorneys for Respondents.

(34125)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1916.

PAUL SCHARRENBERG,
Petitioner.

vs.

THE DOLLAR STEAMSHIP COMPANY, et al.
Respondents.

No. 524

PETITIONER'S BRIEF.

I.

STATEMENT OF FACTS.

In this case petitioner filed a complaint in the District Court of the United States, for the Northern District of California, First Division, on the 19th day of January, 1914, wherein he sought to obtain judgment against the defendants named in said complaint, in the sum of nineteen thousand ($19,000.00) dollars, to-wit: 19 penalties of $1000.00 each, for alleged violations of the law formerly commonly called the contract labor law, now incorporated in and part of the Immigration Law, the original complaint was subsequently amended, and as finally ruled upon by the said learned District

Court, and the United States Circuit Court of Appeals for the Ninth Circuit, is found on (Pages 2 to 13) of the Transcript herein.

A general demurrer was interposed to the complaint, sustained by the said District Court, and petitioner took a writ of error to the said United States Circuit Court of Appeals, which Court affirmed the judgment of the lower Court February 14th, 1916. (Pages 26-27 of Transcript) petitioner in proper time filed and presented a petition for a rehearing, which was denied May 8th, 1916. (Page 27 of Transcript) and in proper time he applied to this Honorable Court for a writ of certiorari, which petition was granted December 4th, 1916, the writ of error issued and return has been made thereon. (Page 31 of Transcript).

The complaint alleges, That the defendants therein named knowingly assisted and encouraged the importations of 19 Chinese contract laborers into the United States, and sets forth facts in substance as follows:

That on the 3rd day of December, A. D. 1913, the British Steamer "Bessie Dollar", was lying at Shanghai, China, with a full complement of officers and a full crew on board, and thereupon the defendants other than James Abernethy, desiring to procure Chinese persons, aliens and contract laborers to come to the United States and serve as seamen on board of an American Merchant vessel, known, named and called the "Mackinaw," they caused the said James Abernethy who was the master of the vessel "Bessie Dollar" to engage such

Chinese persons, which he thereupon did, and written shipping articles were entered into, the following being the service to be performed:

> "On voyages from Shanghai to San Francisco, there to join the S. S. 'Mackinaw,' or any other vessel, within the limits of 70 degrees north and 70 degrees south latitude, trading to and from as may be required, and back to Shanghai, to be discharged with consent of local authorities. Term of service not to exceed two (2) years. The master has the option to transfer any or all of the within mentioned persons to any other British or Foreign ship bound to Shanghai in the same capacity and at the same rate of wages." (Pages 3 and 4 of Transcript.)

It is also alleged that the real purpose of the hiring was to employ the men so signing within the United States, and that none of the men so signing were needed to serve on the "Bessie Dollar."

It is further alleged, that the person so signing came to the United States on the "Bessie Dollar," to-wit: to the Port of San Francisco, State of California, at which last named Port the defendants caused the said contract laborers to be discharged from said "Bessie Dollar" and they were thereupon hired by them to serve on the "Mackinaw," under shipping articles as follows:

> "From San Francisco, Cal., to Shanghai, China, and such other Asiatic Ports as the master may direct, via Grays Harbor, Seattle, Wash., and such other ports on the Pacific Coast as the Master may

direct; final port of discharge shall be Shanghai, China." (Page 4 of Transcript.)

It is alleged that the defendants other than Abernethy, owned and operated the "Bessie Dollar", and that they all brought the contract laborer to this country.

There are nineteen counts in the complaint, and of course on demurrer, all of the allegations of the complaint must be taken as true. It is further alleged that the "Mackinaw" was an American vessel, and that said contract laborer went into her service and worked on her under said contract, in the Port of San Francisco and other ports, on the Pacific Coast and was still working on her, and also that other labor to perform the same service could have been obtained at said ports at said time.

II.

ASSIGNMENT OF ERROR.

The assignments of error (Page 18) of Transcript, assigns as error of the lower Court, that the Court erred in sustaining the demurrer to petitioner's complaint as the complaint showed clearly that the defendants at Shanghai in China, entered into the contract hereinbefore set forth under which the aliens therein mentioned were to come to the United States and there perform service therein for them, and that defendants knowingly assisted and encouraged the importation of said aliens to come to the United States to perform

labor therein under such contract of labor, etc., and that thereby the defendants encouraged and assisted in the importation of alien contract laborers into the United States.

III.

ARGUMENT.

Under the contract aforesaid, each of the aliens mentioned in the complaint were hired in China, to come to the United States and serve on the "Mackinaw", and at the option of the master of the latter vessel they could have been held to such service for two years on coasting or other voyages, all that was required was that they should be returned to Shanghai when the term of service ended. The contract made in Shanghai, read:

> "On voyages from Shanghai to San Francisco, there to join the S. S. 'Mackinaw,' or any other vessel, within the limits of 70 degrees south latitude, trading to and from as may be required, and back to Shanghai, to be discharged with consent of local authorities. Term of service not to exceed two (2) years. The master has the option to transfer any or all of the within mentioned persons to any other British or Foreign ship bound to Shanghai in the same capacity and at the same rate of wages."

What subsequently happened shows that the intent was to bring the men here and tranship them on the "Mackinaw," that was done, there is a reservation how-

ever giving the master of the "Bessie Dollar" the right to transfer them to any other vessel between 70 degrees north and 70 degrees south latitude, which embraces from about the Behring Strait to Cape Horn, and the men so transferred were bound to trade to and fro between those limits if required, and if such trading was on the "Mackinaw" or other American Merchant Vessel, the men would at all times be in the United States, as we will hereinafter show.

After such term of service the requirement was, that the men should be transferred to any other British or foreign vessel and return them to Shanghai.

What was originally commonly called "The Contract Labor Law" is now a part of "The Immigration Act," and those parts of the latter Act applicable to this case read as follows: (36 Stat. 263)

Sec. 2.

"That the following classes of aliens shall be excluded from admission into the United States. * * *

All * * * persons hereinafter called contract laborers who have been induced or solicited to migrate to this country by offers or promises of employment or in consequence of agreements, oral, written or printed, expressed or implied, *to perform labor in this country of any kind, skilled or unskilled* * * * That skilled labor may be imported if labor of like kind unemployed can not be found in this country; *And provided further*, That the provisions of this law applicable to contract labor shall not be held to exclude professional actors, artists, lec-

turers, singers, ministers of any religious denomination, professors for colleges or seminaries, persons belonging to any recognized learned profession, or persons employed strictly as personal or domestic servants."

Congress in that language specified certain exceptions to an otherwise general act, and the proper statutory construction of the act is elementary.

Caminetti vs. *United States*, 37 Supreme Court Rep. 192.

Page 194.

"Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion. * * * It is elementary that the meaning of a statute must in the first instance, be sought in the language in which the act is framed, and if that be plain, and if the law is within the constitutional authority of the law making body which passed it, the sole function of the courts is to enforce it according to its terms. (Authorities cited)

Kendall v. *United States*, 107 U. S. 123.

Page 125.

"And that there might be no misapprehension as to the intention of Congress, the statute, after enumerating the cases to which the limitation of six years shall not apply, declares that 'no other dis-

ability than those enumerated shall prevent any claim from being disbarred. The court cannot superadd to those enumerated, a disability arising from the claimant's inability to truthfully take the required oath. It has no more authority to engraft that disability upon the statute than a disability arising from sickness, surprise, or inevitable accident, which might prevent a claimant from suing within the time prescribed."

Wabash R. R. Co. v. *United States,* 101 C. C. A. 133-139.

"But the power was conferred and the duty was imposed upon the members of Congress, and not upon the courts, to determine whether or not these exceptions to the express terms of the proviso should be made. They did not make them, and that fact raises a conclusive presumption that they did not intend to make them, and it is not in the province of the courts to do so. * * * (many authorities cited)

Lewis Sutherland Statutory Construction, 2 Ed., Sec. 494:

"An express exception, exemption or saving excludes others. When a general rule has been established by statute with exceptions the court will not curtail the former nor add to the latter by implication. * * * The expression of one thing is the to the exclusion of another; and consequently no further exception was intended."

Applying those well-recognized principles to this case, but one conclusion can be drawn, that is, that Congress not having placed seamen within the excepted classes, it is conclusively presumed that it intended the law to apply to them, as they are not within the classes that the law states it shall not operate upon. It is not within the province of a court to extend the excepted classes by including them.

Sec. 4, of The Immigration Act, reads:

> "That it shall be a misdemeanor for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation or in any way to assist or encourage the importation or migration of any contract laborer or contract laborers into the United States, unless such contract laborer or contract laborers are exempted under the terms of the last two provisos contained in section two of this Act."

The two provisos are in the language hereinbefore inserted herein, and the language in section 4 just quoted shows it was the intention of Congress that the terms of the act should apply to all persons other than skilled labor when the same could not be obtained in this country, professional actors, etc.

Sec. 5 of the Act reads:

> "That for every violation of any of the provisions of section four of this Act the person, partnership, company, or corporation violating the same, by

knowingly assisting, encouraging, or soliciting the migration or importation of any contract laborer into the United States shall forfeit and pay for such offense the sum of one thousand dollars, which may be sued for and recovered by the United States, or by any person who shall first bring his action therefor in his own name and for his own benefit, including any such alien thus promised labor or service of any kind as aforesaid, as debts of like amount are now recovered in the courts of the United States; and separate suits may be brought for each alien thus promised labor or service of any kind as aforesaid. And it shall be the duty of the district attorney of the proper district to prosecute every such suit when brought by the United States."

Section 29 of the Immigration Act reads:

"That the circuit and district courts of the United States are hereby invested with full and concurrent jurisdiction of all causes, civil and criminal, arising under any of the provisions of this Act.

U. S. vs. Regan, 232 U. S. 37.

A violation of the statute and a right to prosecute a suit in the proper court appearing, we now take the liberty of passing to the question as to whether the Act applies to seamen. We submit that the deck of an American vessel is within the places Congress intended the Act to apply. But it also appears the men in ques-

tion in this case worked in San Francisco and other American Ports.

Section 33 of the Act reads:

> "That for the purposes of this Act the term 'United States' as used in the title as well as in the various sections of this Act shall be construed to mean the United States and any waters, territory, or other place subject to the jurisdiction thereof, except the Isthmian Canal Zone: Provided, That if any alien shall leave the canal zone and attempt to enter any other place under the jurisdiction of the United States, nothing contained in the Act shall be construed as permitting him to enter under any other conditions than those applicable to all aliens."

In *In re Ross,* 140 U. S. 453,

This Court says, on page 472:

> "The national character of the petitioner for all the purposes of consular jurisdiction, was determined by his enlistment as one of the crew of the American ship 'Bullion.' By such enlistment he becomes an American seaman—one of an American crew on board of an American vessel—and as such entitled to the protection and benefits of all the laws passed by Congress on behalf of American seamen, and subject to all their obligations and liabilities."

Page 479:

> "This rule that the vessel being American is evidence that the seamen on board are such, is now

an established doctrine of this country, and in support of it there is no diversity of opinion and can be no division of action."

Wilson vs. *McNamee*, 102 U. S. 572-574.

"A vessel at sea is considered as a part of the territory to which it belongs when at home. It carries with it the local legal rights and legal jurisdiction of such locality; all on board are endowed and subject accordingly."

Crapo vs. *Kelly*, 16 Wallace 625.

In the following cases a Chinese person was on board of an American vessel on the high seas when the Restriction Act went into effect, and it was held by his Honor, Justice Field, that the person was in the United States when on such vessel, and was entitled to land upon the return of the vessel to this country, upon the theory that he had never been out of it.

The case of the Chinese waiter: 13 Fed. Rep. 256.

In re Ah Tie, 13 Fed. Rep. 286, 291.

Although the complaint in this case alleges service in American Ports, we think it immaterial, for if the service was performed on the deck of an American vessel the person performing it was an American seaman, entitled to all of the protection that this country could give him, either through its courts or in any other manner, and there is no question that the Chinese persons in this

case were performing service in the United States when on the "Mackinaw" no matter where she might be. A violation of the rights of such a seaman by a foreign nation would entitle such a seaman to the protection of the United States, which protection this country would undoubtedly afford.

Landing in the United States, and permanent residence has nothing whatever to do with a violation of the contract labor clauses of the Immigration Law, as

Section 2 of the Act commences:

> "That the following classes of persons aliens shall be excluded from admission into the United States,"

Contract laborers are within the classes so included and are specified later on in Section 2.

Section 19 commences:

> "That all aliens brought to this country in violation of law shall, if practicable, be immediately sent back to the country whence they respectively came on the vessel bringing them." * * *

Under Section 20 of the same law any alien who shall enter the United States in violation of law is liable to be deported at any time within three years, at the expense of

> "the contractor, procurer, or other persons, or other person by whom the alien was unlawfully induced to enter the United States." * * *

It is thus clear that entry is prohibited, and if an entry is effected a deportation is mandatory.

In the case of

Grant Bros. vs. *United States,* 232 U. S. 647

Several Mexicans were hired in Mexico to labor in the United States. They were brought to the border and there detained by the Immigration Authorities; most of them were returned to Mexico, some of them being held as witnesses. The penalties were, however, properly imposed, and this Court sustained the judgment.

It is facilitating the importation of contract laborers after the contract is made that creates the offense and gives the right to the penalty. It is therefore clear that all of the provisions of the contract labor law relating to the landing of immigrants, or the escape of immigrants from vessels, whether they are sailors or not, can have nothing to do with the contract labor provisions, as the penalties are incurred when the contract laborer arrives and not when he lands.

IV.

RESULTS OF SIGNING SEAMEN AS WAS DONE IN THIS CASE.

In *In re Ross, supra,* this Court properly held, that when a seaman enlisted on an American vessel, he was "entitled to the protection and benefit of all the laws passed by Congress on behalf of American seamen."

The enlistment of the men in question on the "Mack-

inaw" in this case, gave to such men the rights possessed by any other seaman although they were Chinese and not entitled to admission in this country at all. Among such rights were the following, under the Revised Statutes of the United States:

Under Section 4507, he would have the right to be shipped and paid off in the office of the Shipping Commissioner necessitating a landing for that purpose.

Under Section 4508, he would have the right to have his name placed upon a register to be kept by the Shipping Commissioner, and if he was a minor the assistance of the Shipping Commissioner in becoming an apprentice on a vessel of the United States.

Under Section 4510. If such a minor became an apprentice, it would be the duty of the master of the vessel on which he was apprenticed to cause such apprentice to appear before the Shipping Commissioner and produce the indenture of apprenticeship, all of which would properly cause a visit to the Shipping Commissioner's Office, and the master of the vessel would be under a penalty of $100.00 for failing so to do.

Under Section 4514 a master is bound to enter into an agreement with every seaman he carries into a voyage, and the vessel is liable to a penalty of not more than $200.00 if he fails to do so.

If a vessel is American Territory and there is no doubt it is, the master of the vessel violates the contract labor law provisions when he enters into such an agreement, and he is liable to a penalty of $1000.00, so in one case the vessel is liable to a penalty of $200.00 if

the master fails to do a certain thing, and in the other case he is personally liable to a penalty of $1000.00 if he does that same thing.

Under Section 4515, if a master permits a man to enter on board of a vessel any seaman who has been engaged contrary to the provisions of law the vessel is liable to a penalty of $200.00 for each of such seamen. It is very clear that any seamen hired in violation of the contract labor provisions of the Immigration Law is engaged and supplied contrary to the provisions of law.

Under Section 4517, all shipments of seamen made contrary to any Act of Congress are void.

Under Section 4517, all the rules and laws relating to Shipping Commissioners are made applicable to Consuls, etc., when the crew is shipped before him.

Take the case of a crew shipped before a consul to serve on an American vessel, particularly a Chinese person so shipped, it would be the shipping of a Chinese person to work on American Territory, a clear violation of the contract labor provisions of the law.

Under Section 4526, the seamen in question in this case, having shipped on the "Mackinaw" in an American Port, would be entitled in case of the wreck of that vessel to be returned to some port of the United States at the expense of the United States if found destitute in a foreign country.

Under Section 4527, anyone of the men in question would be entitled to invoke the aid of a court and attend the court if his wages were not paid.

Under Section 4554, he would be entitled to go before a United States Shipping Commissioner and have any question concerning him arbitrated if agreed to in writing. That of course would entail his presence on shore.

Under Section 4561, if the "Mackinaw" should be found unseaworthy he would have the right to be discharged in the United States.

Under Section 4567, he would have the right to go on shore in an American Port and make a complaint.

Under Section 4576, the crew in question in this case were entitled to be returned to the United States, and the master of the vessel was bound to give a bond for their return.

Under Sections 4577, 4578, 4579, 4580 and 4581, if any of such seamen became destitute or discharged in a foreign country it would be the duty of the United States Consul to send them back to the United States, in some cases at the expense of the Government.

Under Section 4582, in the case of the sale of the "Mackinaw" in a foreign Country each of such seamen would be entitled to return to this Country under the Act of March 3, 1875. 18 Stat. at Large, Page 485, Establishing a Marine Hospital each of the seamen in question would be entitled to admission in and care in the United States Marine Hospital in the event of sickness, provided he took sick within 60 days after his hiring terminated.

It thus appears, that the Chinese in question in this case were given statutory rights and privileges by the

shipment herein which each was entitled to, and that the hiring was not only in direct violation of the Contract Labor law but also that of the Exclusion Act. And there can be no question that a Chinese Alien cannot lawfully be a member of the crew of a vessel flying the American Flag at all, as it follows from the decisions of learned Judges and of this Court, that he is in the United States when on such a vessel. That a Chinese person could not lawfully be upon an American vessel was also the opinion of General Commissioner of Immigration E. P. Sargent, as expressed in the following opinion.

"MEMORANDUM.
"No. 11,983-C.

"In re Transfer Chinese Seamen.

"The Bureau does not think the opinion of the Solicitor, or the authorities he cites in support thereof, exactly meet the issue presented. It is quite true that the Attorney General held that the transfer of certain Chinese seamen, in the port of San Francisco, to the 'Korea' for service on the outgoing initial voyage of that vessel did not, as the said seamen had been signed in Hongkong for a round trip on some vessel or vessels of the Company to which the 'Korea' belonged, conflict with the Chinese Exclusion Laws or the Alien Contract Labor Laws. The judicial authorities quoted by the Attorney General in that opinion, as well as in a subsequent one affirming it, were constructions of the status of Chinese seamen, under the provisions of the Chinese exclusion and Immigration laws

(See *In re Moncan,* 14 F. R., 44; *U. S.* vs. *Burke,* 99 Fed. Rep., 895; 23 Op. Atty. Genl., 520).

"The principles laid down in these cases may, therefore, as the Solicitor suggests, be conceded as settled for the present at least. The Bureau understood, when it prepared Rule 16 of the Chinese regulations of July 27, 1902, that it gave expression to those principles. As a result, any Chinese seaman, lawfully coming on a vessel to any port of the United States, may go ashore, under proper and reasonable restrictions, for shore leave or for the purpose of again signing as a member of the crew of some other vessel than the one by which he came, just as seamen of any other race may, anything in the Chinese Exclusion laws to the contrary notwithstanding. This the Bureau has not understood to be a disputed proposition for some time.

"The question now offered for solution is quite another one, and involves as a dependent proposition the status of Chinese seamen brought to the ports of the United States as crews of vessels of domestic register.

"It will doubtless be conceded that, if a Chinese seaman's position at the time of his arrival at any of our ports is in violation of law, such arrival can not be used as the means of establishing a lawful status for him. In other words, if the deck of an American vessel is American territory within the meaning of the Chinese Exclusion laws, a Chinese seaman thereon brought to our shores can not claim the right to shore leave therefrom or to a landing

to re-embark either on an American or a foreign vessel. The principle upon which this conclusion is based is too fundamental, too primary, in our system of jurisprudence and has been too frequently affirmed by the text writers and the courts to require the support of citations of authorities. Hence, the actual issue presented for administrative ruling is whether the deck of a vessel of domestic register is territory of the United States, which Chinese laborers are forbidden to enter. Upon the determination of this issue depends the nature of the reply to be made to the request of the Pacific Mail Steamship Company for permission to transfer at San Francisco 207 members of the Chinese crew of its 'Siberia' to its new vessel, the 'Manchuria,' to act as crew thereof.

"There are various judicial authorities bearing indirectly, by fair if not necessary implication, upon the point presented, and at least one case which has not been overruled, and which apparently determines it authoritatively. It was assumed in that case that a Chinese seaman is a laborer both in the popular and reasonable sense of that word and within the meaning and intent of the Chinese Exclusion laws, but it was declared that the time within which a departing Chinese laborer might return to the United States, without complying with certain requirements of the law then in force, did not run against the Chinese seaman who had been absent on an American vessel for a longer period—not because such a seaman is not a laborer, as seems to be held by the authorities cited in the Solicitor's opinion, but because in contemplation of law such seaman had never left American soil. The Court said:

"'A person shipping on an American vessel as one of the crew is within the jurisdiction of the United States. An American vessel is deemed a part of the territory of the State within which its home port is situated, and as such a part of the territory of the United States. While on board an American vessel a Chinese laborer is within the jurisdiction of the United States, and does not lose by his employment the right of residence here.'

"In re Ah Sing, 13 Fed. Rep., 286.

"Are the 'Siberia' and the 'Manchuria' not, under this ruling, American territory—by fiction of law the State of California—wherever they go? Would not a registered Chinese laborer, who had left the physical soil of this country as a seaman, without complying with any of the requirements of law as to *departing* laborers, as a member of the 'Siberia's' crew, for instance, be entitled to admission on his return and to residence in this country? But if he had left the United States as a seaman on board of a vessel of foreign register, without securing a return certificate, it seems clear that he would have forfeited his rights as a lawful resident and duly registered laborer and upon his return would be relegated to the inferior and limited rights of a mere Chinese seaman engaged in the pursuit of his regular avocation.

"See Sec. 7, Act of Sept. 13, 1888; Rule 16, Dept. Circ., July 27, 1903.

"Incidentally it may be well to consider the opinion of the Attorney General, Judge Ross, in the case

of *U. S.* vs. *Ah Fawn* (57 Fed. Rep., 591), and an affirmation of decision by the U. S. Circuit Court of Appeals in a recent California case, all in effect holding that the Exclusion laws operate against all Chinese persons not specifically excepted from their provisions. If then, as the courts have held, a Chinese seaman is a laborer, and if also one lawfully in the United States does not lose his right of residence therein when he leaves his country without a return certificate, provided he remains on board an American vessel; by what juggling of the rules of reason and common sense or with color of legislation or judicial authority can it be argued that a Chinaman who can not enter other territory of the United States, can freely engage as a laborer on its constructive territory, and once thereon acquire a sort of vested right as seaman to use our harbors to transfer to other American vessels? The Bureau can not by any sophistry blind itself to the clearly avowed purpose of the law, and it has no hesitancy therefore in stating as its opinion—with which it knows of no conflicting executive or judicial authority—that no Chinaman, not entitled to enter the United States or reside therein can lawfully engage as a seaman on a vessel of American register, or, if so engaged, can lawfully transfer in our ports to another vessel of American register. It follows naturally from this view, that the Bureau further holds that Chinese seamen coming to our ports on vessels of foreign register, while entitled as seamen to land and engage on other vessels of foreign register for outward voyages, as Chinese laborers can not when so landed engage as seamen on American bottoms.

"The request of the Pacific Mail Steamship Company should, in view of the foregoing reasoning, be denied.

Respectfully,

"(sgd) E. P. SARGENT,
Commissioner-General.

"WW.

IV.

REASONS GIVEN BY THE LEARNED COURT OF APPEALS FOR ITS OPINION HEREIN.

The decision of the learned Court of Appeals is based largely upon the reasoning that because a seaman might not become a part of the people of this country, that the Immigration Laws do not apply to him, we submit that the case of *Grant Brothers vs. United States,* and the sections of the Immigration Act heretofore cited shows that reasoning to be wrong.

The decision herein is based upon the following authorities:

Taylor vs. United States, 207 U. S. 120.
United States vs. Sandrey, 48 Fed. 550.
United States vs. Burke, 99 Fed. 895.
Holy Trinity Church vs. United States, 143 U. S. 457.

In the case of *Taylor vs. United States,* a Foreign vessel with a crew properly shipped on board was lying in an American Port when one of the crew escaped and we assume mingled with the people of this country, the

Section it was charged had been violated read at that time:

> "Sec. 18. That it shall be the duty of the owners, officers and agents of any vessel bringing an alien to the United States to adopt due precautions to prevent the landing of any such alien from such vessel at any time or place other than that designated by the immigration officers, and any such owner, officer, agent, or person in charge of such vessel who shall land or permit to land any alien at any time or place other than that designated by the immigration officers, shall be deemed guilty of a misdemeanor, and shall on conviction be punished by a fine for each alien so permitted to land of not less than one hundred nor more than one thousand dollars, or by imprisonment for term not exceeding one year, or by both such fine and imprisonment, and every such alien so landed shall be deemed unlawfully in the United States and shall be deported, as provided by law."

Taylor, the master of the vessel, was proceeded against for allowing the seaman to escape, convicted, and fined. He took a writ of error to the Circuit Court of Appeals and the conviction was sustained (152 Fed. 1). In the proceeding in this Court it was reversed, on the ground, as we understand this Court's decision, that too high a standard of conduct on the part of a master of a vessel was set by the decisions of the lower Court. That this Court did not intend that its decision therein to apply to all cases is clearly shown by the following language:

Page 127.

> "Of course it is possible for a master unlawfully to permit an alien to land, even if the alien is a sailor."

It will be observed that an entirely different part of the Immigration Law was under consideration in that case, to what has been violated in this. No question of landing is involved in this case, as the law was violated whether the men contracted with in Shanghai landed or not.

A landing is not necessary to sustain a violation of the Contract Labor parts of the Immigration Act. —*Grant Brothers vs. The United States*, 232 U. S. 647 supra.

This Court said in the Taylor case:
Page 126.

> "A reason for the construction adopted below was found in the omission of the word 'immigrant' which had followed 'alien' in the earlier acts. No doubt that may have been intended to widen the reach of the statute, but we see no reason to suppose that the omission meant to do more than to avoid the suggestion that no one was within the act who did not come here with intent to remain."

There is a wide distinction between the case of a foreign vessel, with a crew that it could not operate without, lying in a port of the United States and a seaman escaping therefrom, and the case where men are shipped

on board of a foreign vessel in a foreign country for the purpose of bringing them here and transhipping them to an American vessel, if the presence of such men on such an American vessel is landing, and we think it is, it would show an intent to violate not only the Contract Labor parts of the law, but also the parts requiring due precautions to prevent the escape of an alien and the landing without the supervision of an immigration officer.

The case of

United States vs. Sandrey, 48 Fed. 550,

Was another case where a sailor lawfully on board of a foreign vessel lying in a port of the United States, escaped, the law in each of the cases cited ~~herein~~ was different to what it was when the facts in this case arose.

That the court in that case did not intend its decision to apply to the whole range of sailor cases is clearly shown by the following language:

Page 533.

> "We are not dealing with a case where a vagrant sailor has been brought to this country and discharged in a destitute condition, nor with a case where the master of a vessel has connived with an immigrant within the objectional classes to smuggle him into this country under cover of shipping articles."

We respectfully submit that this case is clearly within the above language, as the men in question in

this case were undoubtedly brought into this country under cover of shipping articles.

Again the men in question in this case were not sailors or seamen on the "Bessie Dollar," they were not needed to operate that vessel, she had her own crew—a vessel cannot properly have two crews—and we think that the designation of these men as "seamen," prior to their joining the "Mackinaw" is erroneous. They certainly were not bona fide seamen, if seamen at all.

In the case of *United States vs. Burke*, 99 Fed. 895, a foreign vessel with a crew undoubtedly necessary to her navigation on board, was lying also in a Port of the United States, one of the sailors escaped from the vessel. He however went back on board and promised to stay. The master thought, and he undoubtedly had the right to think, that he would stay. The sailor, however, this time taking his clothes with him, escaped again and the vessel was fined $300.00 for such escape and clearance denied it until payment. The master sued out a writ of mandamus, which was granted. The law that the Customs Officials claimed was violated in that case was Sec. 6 of the Act of 1891, reading as follows:

> "Sec. 6. That any person who shall bring into or land in the United States by vessel or otherwise, any alien not entitled to enter the United States, shall be deemed guilty of a misdemeanor, and shall on conviction, be punished by a fine not exceeding one thousand dollars, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment."

The master of that vessel had not landed the sailor, and the man in question in that case was undoubtedly lawfully on board of a foreign vessel in a Port of the United States as a part of a bona fide crew of his vessel. The complaint was that the master had landed him, which he certainly had not. The contract labor parts of the Act were not even indirectly involved in that case.

That there is a wide distinction between the facts of that case and this was recognized by Judge Toulmin as we find on Page 899 of the decision the following:

> "I have carefully considered the ruling of the assistant secretary of the treasury in the case of the crew of the 'Lancashire,' which may be justified by the facts in that particular case, as they existed, and as they were doubtless made known to him. In that case the vessel had been partly wrecked on the coast of Jamaica and partly restored there, and had changed flags, came to Mobile for docking and more complete repairs; then to load out a cargo for foreign lands. She had shipped at Kingston, besides the ordinary crew usually required on vessels of her class, a large number of additional men, who desired to some to the United States, and who were engaged at Jamaica to come to Mobile at a wage of one shilling per month each, to work chiefly at pumping the leaking vessel, and to be discharged; an absurdly small wage unless the men were working their passage to the United States, as they manifestly were doing. Under such facts as existed in that case, these men so working their passage at the equivalent of 25 cents for the month, but who were actually paid $5 each for the

> month's service (where the ordinary wages were $15 per month), and who stipulated for discharge here in the United States, were plainly immigrants, and properly treated as such, and therefore properly deported under the ruling of the secretary, and this not because bona fide crews of ship fall under the immigration laws, but because they were not a bona fide crew of the ship."

The facts so set forth, except wages, and they are immaterial, are identical with this case.

The Treasury Department in the "Lancashire" case, No. 21724, says among other things:

> "If a contrary view were taken you will readily see that, by collusion with shipowners, or masters of vessels, it would be quite possible to effect the landing of aliens who are forbidden by law to come to this country simply through the device of signing them for the inward trip."

We now respectfully call the Court's attention to other parts of the decision of Mr. Beck, Acting Attorney General, portions of which are quoted in the opinion of the learned Circuit Court of Appeals.

> "It is important, however, to remember that the salutory immigration statutes cannot be defeated by intending immigrants shipping as sailors, Judge Toulmin recognized this in the decision referred to by expressly approving the ruling of your Department in the case of the 'Lancashire.' Aliens who become seamen on vessels for the purpose of securing an entrance into this country free from

> the barriers of the immigration statutes are none the less alien immigrants, and can be treated as such."

Of course the law has been made much more drastic since the rendition of the above decision. A landing is not necessary to violation of the Contract Labor clauses of the Act.

In the case of

> *The Church of the Holy Trinity vs United States,* 143 U. S. 457,

The reverend Mr. Warren was employed in England under contract, in September, 1887, to come to the United States and perform religious services. Subsequent to his entering upon his services proceedings were had that led to a decision that the contract labor law had been violated, and the matter finally reached this Court. At that time the law read:

> "* * * to perform labor or service of any kind in the United States, its Territories, or the District of Columbia."

Labor and service were involved, and this Court very properly held that a minister of the Gospel did not perform labor when he was conducting devotional exercises, saying on Page 462:

> "Among other things which may be considered in determining the intent of the legislature is the title of the act, * * * (Page 463). Now the title of this act is, 'An act to prohibit the impor-

tation and migration of foreigners and aliens under contract or agreement to perform labor in the United States, its Territories and the District of Columbia. Obviously, the thought expressed in this reaches only to the work of the manual laborer as distinguished from that of the professional man. No one reading such a title would suppose that Congress had in its mind any purpose of staying the coming into this country of ministers of the gospel, or, indeed, of any class whose toil is that of the brain. The common understanding of the term laborers does not include preaching and preachers; and it is to be assumed that words and phrases are used in their ordinary meaning. So whatever light is thrown upon the statute by the language of the title indicates an exclusion from its penal provisions of all contracts for the employment of ministers, rectors and pastors."

(Page 464):

"A singular circumstance, throwing light upon the intent of Congress, is found in this extract from the report of the Senate Committee on Education and Labor, recommending the passage of the bill. * * * The committee, however, believing that the bill in its present form will be construed as including only those whose labor or service is manual in character, and being desirous that the bill become a law before the adjournment, have reported the bill without change."

The decision of this Honorable Court was rendered February 29th, 1892. March 3rd, 1891, Congress amended the Act of 1885 to read as follows:

> "Sec. 5. That section five of said Act of February twenty-sixth, eighteen hundred and eighty-five, shall be, and hereby is, amended by adding to the second provision in said section the words, 'nor to ministers of any religious denomination, nor persons belonging to any recognized professions, nor professors for colleges and seminaries," and by excluding from the second section the words 'or any relative or personal friend.' "

The amendment was probably made to clear up the effect of the above-entitled case as it stood after the rendition of the opinion by the Circuit Court of Appeals, and prior to the decision by this Honorable Court.

We submit that nothing can be found in that case that warrants the decision in this case. In the case of *United States* vs. *Parsons*, 66 C. C. A., 129, the lower Court held that the law did not apply to farmers. The learned Court of Appeals, Judges Lurton, Severans and Richards presiding, properly said, page 132:

> "The statute under consideration was adopted for a wise purpose, and ought not to be whittled away by a process of judicial construction. It contains specified exceptions and they ought not to be extended without good cause."

We contend that a court cannot extend them in the absence of statutory authority.

And we are constrained to the opinion that none of the decisions cited by the learned Court of Appeals are applicable to this case. True, there is some dictum that may have some application, but the facts were entirely

different, and the whole scope of each decision and the decision of the Court of Appeals herein is based upon a landing, a violation of entirely different sections of the law. Nor do the rules prescribed by the Commissioner General of Immigration in any way aid the defendants herein. The authority for the rules is found in Section 22 of the Immigration Act, and the parts applicable read as follows:

> "He shall establish such rules and regulations, prescribe such forms of bond, reports, entries, and other papers, and shall issue from time to time such instructions, not inconsistent with law, as he shall deem best calculated for carrying out the provisions of this Act."

Independent of the language "not inconsistent with law," the Commissioner General would be without power to make a rule that would repeal any parts of the law the rules were intended to enforce, but he made no rules that affect this case. Rule 10 is the only rule affecting seamen, and the rule commences:

> "Subdivision 1. Who are Seamen? (a) A seaman is any person employed to serve on board a vessel, whose employment is necessary to commerce and navigation and whose name appears on the ship's articles."

It is sufficient to say that none of the men brought here on the "Bessie Dollar" were necessary to commerce

and navigation on her. She had her own crew. But independent of that, the rules were never intended to, nor could they, give the right to any person to violate the wise provisions of the contract labor clauses of the law.

Those provisions were intended to prevent the bringing of the labor of this country into competition with the pauper labor of other countries, and to say that seamen should meet such competition would be in effect the holding that they were not a part of the people of this country. Why should they be so brought? Their services are of such a character in this age that without them commerce between this and other countries cannot be carried on. The mercantile marine is the school for officers of the mercantile marine, and we have also always looked to the merchant marine for most of the sailors to man warships. The hardships of the calling, competition with Asiatic labor, and insufficient food in the past, now happily remedied by legislation, and other things incident to the sailors calling, have heretofore offered no inducements to American youths to adopt the sea as a calling, as a consequence we have few native-born sailors or American officers of merchant vessels. The best interests of a country are subserved when her vessels are officered and manned by men of her own people, and what reason can be held forth for saying that Congress did not intend the contract labor provisions of the law to apply to sailors? It did not say so in the Act. It unquestionably considered who the Act should apply to; it made exceptions; and we submit that the conclusive

presumption arises that it intended the Act to apply to seamen, as it did not say it should not apply to them.

The purposes of the Act are set forth in the case of

The Church of the Holy Trinity vs. *United States,* 143, U. S., 457,

where this Court says on Page 463:

> "The motives and history of the Act are matters of common knowledge. It had become the practice for large capitalists in this country to contract with their agents abroad for the shipment of great numbers of an ignorant and servile class of foreign laborers, under contracts, by which the employer agreed upon the one hand to prepay their passage, while, upon the other hand, the laborers agreed to work after their arrival for a certain time at a low rate of wages. The effect of this was to break down the labor market, and to reduce other laborers engaged in like occupations to the level of the assisted immigrant. The evil finally became so flagrant that an appeal was made to Congress for relief by the passage of the Act in question, the design of which was to raise the standard of foreign immigrants, and to discountenance the migration of those who had not sufficient means in their own hands, or those of their friends, to pay their passage."

The defendants in this case had an agent in their shipmaster in China. Very few shipowners have. They were able in that way to secure a crew for the "Mackinaw" at a much lower wage than other shipowners had to pay. Sailors on the Pacific Coast were thus brought

into direct competition with such wages, and other shipowners would not be able to compete. The Court of Appeals for the Ninth Circuit held in the case of *In re Pacific Mail S. S. Co.*, 130, Fed. 176, that a vessel manned as the "Mackinaw" was manned with the men in question in this case on board was unseaworthy. Congress has given its support to the opinion in that case, in common with many other nations, by now requiring a language test for sailors. It is very clear that not only the letter but the spirit of the Act in question was violated in this case, and if such acts are permitted to continue, they will undoubtedly lead to the wholesale importation of Asiatics, with the result that we will have unseaworthy vessels, and seamen who make their homes in this country will be brought down to the level of the Asiatic race whose members were imported in this case.

If, as we suppose, defendents will urge that American ships cannot compete with foreign ships, when the latter are manned by cheap labor, and American ships are manned with American labor, the remedy should be sought in Congress where there is abundant power to regulate and harmonize the whole matter by subsidy, or otherwise.

We therefore respectfully submit that the decision of the United States Circuit Court of Appeals for the Ninth Circuit and the United States District Court for the Northern District of California, herein, should be re-

versed, with instructions to overrule the demurrer to petitioner's complaint.

Respectfully,

J. H. RALSTON,
W. E. RICHARDSON,
H. W. HUTTON,
Attorneys for Petitioner.

In the Supreme Court

OF THE

United States

October Term, 1916

PAUL SCHARRENBERG,
Petitioner,

vs.

DOLLAR STEAMSHIP COMPANY et al.,
Respondents.

No. 524 19

PETITIONER'S REPLY BRIEF.

J. H. RALSTON,
W. E. RICHARDSON,
H. W. HUTTON,
Attorneys for Petitioner.

Filed this.....day of October, 1917.

JAMES D. MAHER, Clerk.

By.....Deputy Clerk.

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In the Supreme Court
OF THE
United States

October Term, 1916

PAUL SCHARRENBERG,
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vs.
DOLLAR STEAMSHIP COMPANY et al.,
Respondents.
No. 524

PETITIONER'S REPLY BRIEF.

Petitioner respectfully calls the court's attention to the following matters in reply to what appears in respondents' brief:

The termini of the voyage of the "Mackinaw" is unimportant, because the violation of law occurred when the contract was signed at Shanghai and the men were transported to an American port to perform labor and service. Nothing occurring thereafter could affect such violation.

Rules promulgated by a department cannot be set above the statute.

U. S. v. Grimaud, 220 U. S. 506, 519-20.

The rules cited on page 11 of respondents' brief are not applicable to this case for reasons stated in our brief, and the additional reason that the rules could not operate at all until the violations of law complained of had taken place and the penalty become fixed.

The opinions of the Attorney General are not *res adjudicata.*

Pearson v. Williams, 202 U. S. 284-285.

The Commissioner General of Immigration in his following annual reports comments disapprovingly of the rulings of the Attorney General's office on the matters stated in respondents' brief, to wit:

Annual Report for the Fiscal Year ending June 30, 1903, pages 105, 119-120,

where we find:

> "It has been held by the Attorney-General that neither the provisions of the law in relation to the introduction of aliens under agreement to perform labor or service if any kind in the United States, nor the laws in relation to the exclusion of Chinese persons, conflict with the bringing of Chinese seamen to the country and their subsequent landing to be sworn before a United States shipping commissioner, to become members of the crews of American vessels. This decision, in my judgment, discloses a serious defect which demands remedial legislation in the laws referred to. Particularly does this necessarily arise as to the first-mentioned laws, since it can not be assumed that Congress intended to make the provisions for the protection of American labor

any less effective as regards those employed as seamen than with respect to citizens of the country engaged in other pursuits involving physical labor."

Annual Report for the Fiscal Year ending June 30, 1904, pages 147-149,

in which we find:

"I am aware that in many instances efforts have been made to interpolate into the various laws affecting the immigration of aliens to this country, an implied exception as regards seamen, upon the apparent theory that such exception is necessary to the growth of our mercantile marine. Usually, however, the sole obstacle to securing American seamen is that it costs more than alien labor in the same line. In such case it can not reasonably be contended that our merchant marine stands in this respect upon any other or different footing from that occupied by our numerous and meritorious industries, which would equally desire the privilege of securing labor where it can be obtained at the lowest cost."

Annual Report for the Fiscal Year ending June 30, 1905, page 100,

where the following appears:

"While the Bureau believes that if the question could be brought before the courts their construction of existing law would put a stop to the abuse, yet I can not conclude this subject, since it has been impossible thus far to obtain a judicial hearing on any case involving the question, without directing attention to the remarks made in its last annual report on the violations of the exclusion law, and of the contract-labor law as well, through what it con-

fidently believes is a misconstruction if the navigation laws, by the employment of Chinese seamen on American vessels."

Annual Report for the Fiscal Year ending June 30, 1905, pages 93-94:

"But when vessels of American register uniformly engage Chinese seamen because they cost less or are more convenient for some actual or fancied reason, thus barring American seamen, the latter have just cause of complaint of inequality in the operation of our laws.

If other classes of labor in this country are entitled to protection from unfair alien competition, seamen should be equally so, if the deck of an American vessel is, in the eye of the law, American soil to protect a Chinese person thereon during his absence from our territory, it should equally be American soil to prevent the admission thereon of Chinese not entitled to come to or reside in this country. * * *"

It will be seen by the foregoing that strong protest has existed in the Immigration Bureau to the opinions of the Attorney General's office on this matter cited in respondents' brief.

The case of the United States v. Burke is the mainstay of all the said opinions.

When we consider that that case was decided in December, 1899, on the Act of March 3, 1891, which does not contain the parts of the Contract Labor Law that we invoke, and the facts are simply those of a seaman properly on board of a foreign vessel, escaping, we confidently think it can have no application to this case. The whole theory of that case

is that to violate the immigration laws a man must come to this country *with the intent to remain.* If that was the law relative to contract labor at that time (and we do not think it was), it is not the law now, and we submit that the court was in error when it used the following language found on page 20 of respondents' brief.

> "Now, every foreign seaman on a vessel of this or a foreign country, signed on the articles aboard, is an alien contracted with to perform duty in the United States while the vessel lies in the United States, loading."

If unnecessary seamen were signed on an American vessel in a foreign port with the express intention of bringing them here to compete with American seamen, as in this case, the above language would apply; but we deny that the signing of seamen on a foreign vessel with but the express understanding that they shall work on that vessel wherever she may be and only in the prosecution of that vessel's voyage, would be a contract to perform labor in the United States. The deck of a foreign vessel is not a place subject to the jurisdiction of the United States. It may be to the municipal criminal law while the vessel is in one of our ports, but not otherwise.

We do not believe, again, that if an American vessel is without a crew, or any part of it, in a foregin port, that it is violation of the Contract Labor Law to hire seamen to supply the vessel's needs, *but we do believe that it would be a violation*

of the Exclusion Law to hire a crew of Chinese to do so.

The whole Immigration Law, however, contemplates that seamen coming here on a foreign vessel shall go out again on the same vessel. If one escapes, the only question that can arise is: Did the master use due diligence to prevent such escape? And that is the sole question that arose in all the authorities cited. in the Burke case, and respondents' brief herein.

If the men in question in this case were ministers of the Gospel, and the law was the same as it was when the case of The Church of the Holy Trinity was decided, then that case would have some application in this. As it is we fail to see that it can have any application. The Reverend Mr. Warren was not at any time performing labor, and this court never intended that decision to be authority to any court to insert any exception it thought fit into the statute.

The Act of March 4, 1915, can have no application to this case. By certain treaties, a seaman, if deserting in this country from a foreign vessel, could be arrested and placed back on the vessel again. The sole intent of that Act was to prevent involuntary servitude, and also try to make a common standard of wages for all seamen; for if an owner of a foreign vessel knew that his seamen might be tempted to desert on account of wages paid in this country, he would conclude he would have to pay the same to

prevent such desertion; but, again, there is a wide distinction between the case of a seaman of the white race deserting in an American port and the facts of this case. The seaman of the white race would assimilate with the rest of our people and become a part of us, and there would be no such unlawful competition as the law tries to prevent.

All we can gather from pages 18-19-20 of respondents' brief with respect to the communication of the International Seamens Union is that neither the President nor Congress took any action upon it. If any presumption at all arises, it is the presumption that both thought the subject was now covered by adequate legislation.

The action of the Shipping Commissioner in signing the men in question on after their arrival in this country cannot help respondents any. The law had been violated when he did so, and he could not either expressly or impliedly exonerate defendants from the consequences of their commission of an unlawful act. Nor does it appear that he knew the law had been violated when he signed the men on; nor could any other public official. As to the penalties, they cannot be remitted in this case by the Government, plaintiff, or anyone else, for Section 27 of the Act reads:

> "That no suit or proceeding for a violation of the provisions of this Act shall be settled, compromised, or discontinued without the consent of the court in which it is pending, entered of record with the reasons therefor."

Seamen are no more citizens of the world than any other person. We assume we are all citizens of the world, in so far as we are a part of the people of the world. We owe allegiance to the country of our birth, or adoption—so does a sailor, and there is no distinction between us in that respect. All merchants are brought into competition with the world, as are manufacturers. Where is the sailor any different? Congress, however, has said that he shall not be brought in competition with pauper labor in this country. The seamen of America were, in this case, and it is in that that the law was violated.

We respectfully submit, that the authority of

U. S. v. Jamieson, 185 Fed. 165,

overlooks the words "other Chinese person" in the Act, and that it was disagreed with in

United States v. Crouch, 185 Fed. 907.

As to being misled by any opinion of the Attorney General or other Government official, respondents were presumed to know the law. No one can claim exemption from the penalties of the violation of law by reason of advice given by an executive officer. If it were the law that he could do so, no one would need to respect the law, as some decision could always be found that would, according to the violator, justify him in an infraction. The burden of knowing what the law is, is placed upon us all, and no violator can shield himself behind the advice of another, no matter who he may be.

If respondents' contentions are correct, any person in the United States can do precisely the same thing in other occupations; that is, bring men into the country, keep them in satisfactory confinement until the work is completed, then ship them out again and take refuge under what respondents claim is the law.

We submit that Congress never intended evasions of that character to be permitted. The reasoning that a seaman has no home would apply equally to men engaged in railroad construction—sometimes in this country and sometimes in Canada and Mexico, and also to the operators of trains between this and those countries.

The Commissioner-General of Immigration suggests that there is a doubt in the law and advises legislation to clear the doubt; but also says that the law, in his opinion, has been misconstrued. We are certain that the law does not need amending, that the statutes are clear on their face and that the law has been misconstrued. In this case, the most that can be said for the decisions relating to seamen on foreign vessels lying in the harbors of the United States is, that they occupy a different position to people coming here as passengers with the intention of landing; but that will not support the claim that shipowners have the right to contract with men in a foreign country for the express purpose of com-

ing here and competing with American labor, as was done in this case.

Dated, San Francisco,
September 25, 1917.

Respectfully submitted,

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Attorneys for Petitioner.

In the Supreme Court

OF THE

United States

October Term, 1916

PAUL SCHARRENBERG,
Petitioner,

vs.

DOLLAR STEAMSHIP COMPANY et al.,
Respondents.

No. 524

BRIEF FOR RESPONDENTS.

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Filed this.....day of September, 1917.

JAMES D. MAHER, Clerk.

By.....Deputy Clerk.

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In the Supreme Court
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PAUL SCHARRENBERG, *Petitioner,* vs. DOLLAR STEAMSHIP COMPANY et al., *Respondents.*	No. 524

BRIEF FOR RESPONDENTS.

The question to be determined by this Court arises upon an order sustaining a demurrer to a complaint, upon the ground that said complaint does not state a cause of action. The controlling facts alleged in said complaint are as follows:

The defendant hired at Shanghai certain seamen to serve upon the British steamer "Bessie Dollar," under a contract, the substance of which is set forth in the following language:

> "On voyages from Shanghai to San Francisco, there to join the SS. 'Mackinaw' or any other vessel within the limits of 70 deg. North and 70 deg. South latitude, trading to and from

> as may be required, and back to Shanghai to be discharged with consent of local authorities. Term of service not to exceed two (2) years. The master has the option to transfer any or all of the within mentioned persons to any other British or foreign ship bound to Shanghai in the same capacity and at the same rate of wages."

The seamen went on board the said steamer "Bessie Dollar" at Shanghai, and *worked as seamen* on said vessel on her voyage from Shanghai to the port of San Francisco, though it is alleged that at "that time no seamen or other persons were needed to work upon said steamer 'Bessie Dollar'."

Upon arrival at San Francisco these seamen were discharged from service on board said "Bessie Dollar" and transferred to the "Mackinaw," an American vessel, then and there signing Shipping Articles before the United States Shipping Commissioner for service on board the said steamer "Mackinaw" for a voyage in said articles described as follows:

> "From San Francisco, Cal., to Shanghai, China, and such other Asiatic ports as the master may direct via Grays Harbor, Seattle, Wash., and such other ports on the Pacific Coast as the master may direct; final port of discharge shall be Shanghai, China."

In accordance with this agreement they went on board the "Mackinaw," to work as seamen on said vessel, and (in the language of the complaint),

> "worked on board of said vessel in the said port of San Francisco for some days, and also

> on a voyage of said vessel from San Francisco to Grays Harbor, and at Grays Harbor also worked on said vessel as a seaman, pursuant to said hiring, and did, and is now, performing labor on board said vessel."

Nothing is said in the complaint about the nature of the voyage which the said steamer "Mackinaw" was performing when these seamen "worked on board in San Francisco" and also "in Grays Harbor," but all intendments being against the pleader, it must be assumed that she was then upon the voyage described in the articles, to wit: "from San Francisco, Cal., to Shanghai, China, * * * *via* Grays Harbor."

We do not consider it important to dwell upon the allegations of the complaint concerning the purpose or intent of the employment, because that is settled by the more particular allegations of fact, to wit, the terms of the contracts of employment. These are, first, employment on the steamer "Bessie Dollar" "on voyages from Shanghai, China, to San Francisco, there to join the S.S. 'Mackinaw' or any other vessel," at the option of the master to be transferred to any other British or foreign ship bound to Shanghai, and then, after being transferred to the steamer "Mackinaw," to be employed on a voyage

> "from San Francisco, Cal., to Shanghai, China, and such other Asiatic ports as the master may direct *via* Grays Harbor, Seattle, Wash.", etc.

Upon this state of facts, the question arises, Was that a violation of the statute prohibiting *"the transportation, or assisting or encouraging the transportation or migration of any contract laborer into the United States?"*

The Argument.

Plaintiff's argument, so far as we can discern, is founded principally upon the propositions:

1. That seamen are within the letter of the law; that the express exception of certain classes of labor in the statute excludes any implied exception of other classes, even though the latter be not within the spirit or intent of the law. This, too, notwithstanding that this Court, in construing this statute, has already expressly and pointedly decided to the contrary.

2. With the foregoing is linked the proposition that an American vessel is American soil, upon which contract labor is prohibited.

3. Finally he makes a plea for the relief of American seamen from competition with the seamen of other countries, special stress being laid upon "Asiatic seamen." At the same time he refers the American shipowner to Congress for a subsidy as relief from the commercial paralysis which plaintiff foresees must result from his construction of the statute.

In reply we say:

1. That seamen are not laborers within the meaning and intent of the Act. In support of this proposition we point to the whole course of judicial interpretation (this Court included); to the executive practice; to rules promulgated by the Department of Labor pursuant to authority given by the Act, and to what we deem subsequent legislative interpretation by Congress.

2. That the foregoing, and the participation of the Shipping Commissioner in the reshipment of said crew, constitute governmental invitation to the respondent to do the act complained of, and the present case, being an *action for debt by a private individual for his own benefit,* plaintiff is estopped from taking advantage of defendant, if the latter has thereby been misled.

3. That the construction of the Act contended for by plaintiff is *not in the interest of American seamen;* that the fact that the present suit relates to Asiatics is immaterial; that the law applies to alien seamen of all countries, or to none; that it is the interest of American seamen that American ships shall be kept afloat in the foreign trade, which cannot be done without the employment of "alien seamen"; that the suggested remedy of a Congressional subsidy is an *ignis fatuus,* unsuccessfully pursued by American shipowners for years; that to abandon this last remaining bit of solid ground, before the subsidy is transformed into a substan-

tial light, would sink American ships in the deadly marshes, and with them the future opportunity of American seamen.

Before entering into a discussion of the above questions, we wish to eliminate what we consider an erroneous suggestion of fact, namely, that these seamen, under the contract, could be held for *coasting* voyages. This involves a question of

THE PROPER INTERPRETATION OF THE CONTRACT.—Referring to the employment of the seamen on the "Mackinaw," petitioner claims that "at the option of the master of the latter vessel they could have been held for such service for two (2) years on *coasting* or other voyages." In support of this statement the contract with the "Bessie Dollar" is quoted, and supplemented with the observation that

> "There is a reservation, however, giving the master of the 'Bessie Dollar' the right to transfer them to any other vessel between 70 deg. North and 70 deg. South lat., which embraces from Behring Straits to Cape Horn, and the men so transferred were bound to trade to and fro between those limits if required, and if such trading was on the 'Mackinaw' or other American merchant vessel, the men would at all times be in the United States, as we will hereafter show."

Construing this provision as a contract for *coasting* voyages, does violence to the terms of the contract. Under it the men could *not* have been employed in *coasting* voyages. The contract does not

in fact provide for any coasting voyages whatsoever.

In the "Bessie Dollar" contract the termini of the voyages are expressly fixed as "voyages from Shanghai to San Francisco * * * trading to and from as may be required, and back to Shanghai to be discharged," etc. The phrase "within the limits of 70 deg. north and 70 deg. south latitude" in nowise changes the termini of the voyages thus described, no matter what interpretation be placed upon the limitation respecting the latitudes within which the vessel shall be employed. Read in the light of its context, this limitation is simply and only a provision regarding the place where the seamen shall "join * * * any other vessel," the "Mackinaw" excepted. The provision "trading to and from" applies to the termini of the voyages expressed in the contract, namely, Shanghai and San Francisco.

Such is not only the natural meaning of the language used, but it is also the interpretation placed upon it by the parties at the time of the execution of the "Mackinaw" articles, which latter must not only be read in conjunction with the "Bessie Dollar" articles, but are in fact the only articles which determine the nature of the voyages to be performed by the "Mackinaw," an American vessel, and which alone could be employed in coasting voyages. Those articles provide for a voyage "from San Francisco, Cal., to Shanghai, China, and

such other Asiatic ports as the master may direct *via* Grays Harbor, Seattle, Wash.," etc. This is certainly not a *coasting* voyage.

In this connection, it is significant that while the complaint alleges that the seamen "worked" at Grays Harbor, it does not state what the nature of that work was, nor in what business the vessel was then engaged. Here, again, we have recourse to the rule that all intendments are against the pleader. The voyage was a voyage "from San Francisco to Shanghai, China, *via* Grays Harbor," and while the Court may not be justified in taking judicial notice of the fact that Grays Harbor is an export lumber port, it is nevertheless justified, under the pleadings, in assuming that the labor alleged to have been performed in Grays Harbor was performed in lading the vessel with a cargo destined for Shanghai, China, and not performed in the discharge of a cargo taken on board at San Francisco destined to said port of Grays Harbor.

It was not, therefore, a *coasting* voyage within the legal meaning of that term. A coasting or coastwise voyage is only such a voyage wherein the vessel is engaged in receiving, transporting and delivering cargo *between two coastwise* ports.

To the foregoing we might add the suggestion that, since the petitioner contends that the employment of these seamen in a coastwise voyage would be illegal, he is bound by the rules of interpretation consistent with that theory, and

Court will not so construe a contract, ambiguous in its terms, as to render it illegal, nor will it presume an illegal purpose, where the contract is capable of a construction giving it a legal purpose.

So much for the meaning of the contract.

The Law as Applied to the Facts of This Case.

THE STATUTE.—The complaint is founded upon the Immigration Act of February 20, 1907 (34 Stat. 898) as amended by the Acts of March 26, 1910 (36 Stat. 263).

Section 4 of the Act provides:

> "That it shall be a misdemeanor for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation or in any way to assist or encourage the importation or *migration* of any contract laborer or contract laborers *into* the United States, unless such contract laborer or contract laborers are exempted under the terms of the last two provisos contained in Section 2 of this Act."

Section 5 provides:

> "That for every violation of any of the provisions of Section 4 of this Act the person, partnership, company, or corporation violating the same, by knowingly assisting, encouraging, or soliciting the *migration* or importation of any contract laborer *into* the United States shall forfeit and pay for every such offense the sum of one thousand dollars, which may be sued for and recovered by the United States,

> or by any person who shall first bring his action therefor in his own name and for his own benefit, * * * as debts of like amount are now recovered in the Courts of the United States"; etc.

The provisos referred to in Section 4 are as follows:

> "That skilled labor may be imported if labor of like kind unemployed cannot be found in this country: AND PROVIDED FURTHER, that the provisions of this law applicable to contract labor shall not be held to exclude professional actors, artists, lecturers, singers, ministers of any religious denomination, professors for colleges or seminaries, persons belonging to any recognized learned profession, or persons employed strictly as personal or domestic servants."

Section 22 provides:

> "That the commissioner general of immigration * * * shall under the direction of the Secretary of Labor * * * establish such rules and regulations * * * and shall issue from time to time such instructions, not inconsistent with law, as he shall deem best calculated for carrying out the provisions of this Act and for *protecting the United States and aliens migrating thereto* from fraud and loss"; etc.

EXECUTIVE PRACTICE, DEPARTMENT OF LABOR.—Under the authority thus conferred, the Department of Labor promulgated, among others, the following rules:

"Rule 10, SEAMEN—Subdivision 1. Who are seamen.—(a) A seaman is any person employed to serve on board a vessel, whose employment is necessary to commerce and navigation and whose name appears on the ship's articles."

* * * * * * *

"(c) Seamen *whose employment terminates at a port of the United States and seamen who are discharged in a port of the United States* are to be treated as seamen *if it appears that they intend to re-ship* on a vessel bound *to a foreign port,* or to depart from the country within a reasonable time."

"(d) Alien seamen, however, who are insane, idiots, imbecile, epileptics, or persons afflicted with tuberculosis or with a loathsome, dangerous, contagious disease, and the existence of whose disease or disability might have been detected by means of a competent medical examination at the time of foreign embarkation, are persons whose employment on board vessels is in nowise necessary to commerce and navigation, and who are, accordingly, *not within the exception in favor of seamen,* because *not within the reason thereof.* The bringing of such seamen to the United States, therefore, is unlawful by the terms of Section 9."

* * * * * * *

"Subd. 3. Seamen engaged in foreign trade.—Subject to the foregoing limitations and restrictions, *alien seamen* employed on vessels plying between foreign ports and ports of the United States *may, without regard to the provisions of the immigration law,* land in the United States either on shore leave or on business of the vessel, or *for any purpose incident to their calling, including for the purpose of reshipping on another vessel* bound to a foreign port as soon as practicable."

The italics in the above quotations are our own.

It will be observed that the above rules permit the discharge of alien seamen in the United States if they intend to re-ship, and generally permit them to land "on *shore leave* or on business of the vessel, or for *any purpose incident to their calling.*" They expressly recognize an "*exception in favor of seamen.*"

Neither do the rules limit the "re-shipping" to a re-shipment on another *foreign vessel,* but only to "a vessel bound to a foreign port." It may, therefore, be an American vessel.

The rules and regulations express in very plain terms the interpretation placed by the Department upon this law and establish the executive practice with respect to its enforcement. It seems to have been recognized both by the courts and by the executive department that seamen, while engaged in their calling, are not, within the meaning of the law, contract laborers, and that having in view the necessities of commerce, the statute never intended to include them while engaged in the business of their calling.

DEPARTMENT OF JUSTICE.—The matter came up squarely for consideration by the Department of Justice on the application of the Pacific Mail Steamship Company to the Treasury Department for the transfer of a crew originally shipped on the

"City of Pekin" under Shipping Articles stipulating for the return voyage by the "City of Pekin" "or any other vessel of the same company in the trans-Pacific trade." The "City of Pekin" was disabled, and the crew transferred to the "Gaelic," a British vessel, and brought to San Francisco, where the Pacific Mail Steamship Company desired to transfer them to the "Korea," which vessel had been substituted for the "City of Pekin" for the return voyage to Hong Kong.

Three questions were propounded to the Attorney General, only one of which we find it necessary to refer to in the present connection:

> "Second.—If such transfer could be made without the said crew being first duly signed for service on the 'Korea' before a United States Shipping Commissioner at the port of San Francisco, would it not be a violation of the Act of February 26, 1885 (23 Stat. 332) and Acts amendatory thereof, known as the 'Alien Contract Labor Laws'?"

Having already determined that the transfer of the crew might be permitted, after duly signing before the United States Commissioner for the return voyage to Hong Kong in accordance with their contract, the Attorney General quotes from *United States v. Burke,* 99 Fed. 895-98, hereinafter referred to, and concludes that,

> "The principle thus announced applies to the Alien Contract Labor Laws. I therefore answer your second question to the effect that the Alien Contract Labor Laws will not be violated

> by the transfer of the crew of the 'City of Pekin' to the 'Korea'."
>
> 24 Atty. Gen. Op. 113-14.

The matter came up again with respect to an application of this defendant, namely, Dollar Steamship Company for permission to transfer forty Chinese persons, members of the crew of the Danish steamer "Arab" to the Danish vessel "Stanley Dollar" (this must be an error, for the latter was in fact an American steamer) and also the application of the Pacific Mail Steamship Company for permission to transfer a Chinese crew from one of its vessels to the "Siberia" to act as the crew thereof on the outward bound initial trip of said vessel. The Attorney General reaffirmed his opinion that

> "The Chinese Exclusion Laws and the Alien Contract Labor Laws have no application to seamen who, in good faith, have engaged in navigation, and who are temporarily within a port of entry for that purpose."
>
> 24 Atty. Gen. Op. 553.

In passing, it will also be noted that, in both of these cases, the question arose as to whether or no such acts would be a violation of the Chinese Immigration Laws. In the former opinion the Attorney General answers at some length, and upon the authority of the case of *The George Moncan,* 14 Fed. R. 44-47, held that such Chinese crews were ***not laborers*** within the meaning of the Chinese Ex-

clusion Act, for which reason, the proposed transfer was not a violation of that Act. It is interesting to note that this interpretation of the Act is still adhered to by the Courts. (*In re Ah Kee,* 22 Fed. 519; *In re Jam,* 101 Fed. 989 (May 25, 1900); *United States v. Jamieson,* 185 Fed. 165-67 (Feb. 3, 1911).)

JUDICIAL INTERPRETATION.—The foregoing rules of the Department of Labor are justified by the controlling decisions of the Courts.

The controlling principle, followed and applied to varying facts in subsequent cases, is laid down by this Court in the case of the *Church of the Holy Trinity v. United States,* 143 U. S. 457, namely:

> "A thing may be within the letter of the statute and yet not within the statute, because not within its spirit nor within the intention of its makers." (143 U. S., 459.)

And again:

> "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter." (143 U. S., p. 461.)

In *Taylor v. United States,* 207 U. S. 124-26, this Court in effect reaffirmed the foregoing principles in the construction of this statute as applied to

the case of a *sailor. In principle,* the latter case is on all-fours with the former, with the exception that the occupation under consideration is that of a sailor, instead of that of a minister. Having in view the *necessities of commerce,* this Court says that "No one believes that the statute intended altogether to prohibit their doing so," namely, sailors going ashore. That "the necessary result can be reached only by saying that the *section does not apply to sailors* carried to an American port with a bona fide intent to take them out again when the ship goes on," etc.

The Court was considering the question as to whether or no the bringing of a sailor to the United States was "bringing an alien to the United States," or "permitting an alien to land" within the meaning of the act.

In the course of the opinion we find the following observations:

> "But it is necessary to commerce, *as all admit,* that sailors should go ashore, and *no one believes that the statute intended altogether to prohibit their doing so. The contrary always has been understood of the earlier Acts, in judicial decisions and executive practice.* If we reject the ambiguous interpretation of 'to land,' as we have, *the necessary result can be reached only* by saying *that the section does not apply to sailors carried to an American port with a bona fide intent to take them out again when the ship goes on,* when not only there was no ground for supposing that they were making the voyage a pretext to get here, desert, and get in, but there is no evidence

> that they were doing so in fact. Whether this result is reached by the interpretation of the words 'bringing an alien to the United States,' that has been suggested, or on the ground that the statute cannot have intended its precautions to apply to the ordinary and necessary landing of seamen, even if the words of the section embrace it, as in *Church of the Holy Trinity v. United States,* 143 U. S. 457, does not matter for this case. We think it superfluous to go through all the sections of the Act for confirmation of our opinion. It is enough to say that *we feel no doubt when we read the Act as a whole.*"

In commenting upon this case, plaintiff (Br. 23-26) attempts to distinguish it from the present case upon the ground that a different *part* of the Immigration Law is there under consideration. But petitioner fails to notice that in the *Church of the Holy Trinity* case, *this very section* was under consideration, and that, in the *Taylor* case, this Court was basing its decision on "the Act as a whole." "We think it superfluous to go through all the sections of the Act for confirmation of our opinion. It is enough to say that we feel no doubt when we read the Act as a whole."

Moreover, it will not do to say that different parts of the same statute shall receive opposite constructions. So far as the principle of construction is concerned, it must be uniform and applicable alike to all of its parts—indeed to all of the immigration laws which are in pari materia. (*Moffitt v. United States,* 128 Fed. 378.)

We must, therefore, accept it as the rule of construction for both sections—for the "Act as a whole".

A like principle is announced by Judge Pardee of Louisiana in *United States v. Sandry,* 48 Fed. 552-53, where a stowaway had been signed as a seaman and afterwards deserted. The master was charged with a violation of the Act, and the Court said:

> "Aliens comprising the crews of vessels visiting our seaports are in no sense immigrants, and as the review of the statute as above shows, are nowise affected by the law in question. With regard to them, the law imposes no duties, nor penalties upon the masters and agents of vessels.
>
> * * * * * * *
>
> "Prior to his shipment he was a stowaway and destitute, and his purpose may have been to immigrate to the United States, but when he was enrolled as a seaman, and signed articles from a voyage from Liverpool to New Orleans and return to Liverpool, his status as a British seaman became fixed. He ceased, for the time being, at least, to be a possible immigrant; and with regard to him the master of the steamship Cuban, the accused in this cause, was charged with no duties, nor exposed to any penalties under the Act of Congress approved March 3, 1891. His desertion after the arrival of the ship at the port of New Orleans in no wise affects the duty or the responsibility of the accused. Murray's legal *status,* if he is now in this country, is not that of an immigrant, but that of a deserter from his ship."

The provisions of the Act are set forth in the decision, from which it can readily be seen that the above language as applied to that act, is equally applicable to the Act at present under consideration.

So, in the case of *United States v. Burke,* 99 Fed. R. 896-97-98, the question is treated with considerable fullness, and the fact that the opinion of the Court contains some of the arguments we would address to the Court in the case at bar, is our excuse for a somewhat lengthy quotation:

> "The legislation contained in the various statutes that have been passed relating to immigration is clearly directed against the immigration into this country of certain classes of persons who come in with the intent to enter into and become a part of the mass of its citizenship or population. Immigration is defined to be the entering into a country with the intention of residing in it. The earlier statutes merely prohibit contract laborers being brought in. The later ones prohibit the bringing in of immigrants—persons who come into this country with the intention of remaining, of fixing a residence here—and who are calculated to become a charge upon the country, or who are unfit, on account of moral character, previous conviction of crime, or disease, to be admitted as citizens. Nothing in the scope of the statutes seems to contemplate, or can be rationally held to contemplate, the prohibition of the bringing within the country by vessels of their crews engaged under contracts made out of the country, *to labor on the vessels* while approaching and *while in the ports of this country,* and to sail again with the vessels

from this country. By Sections 1, 2 and 3 of the Act of February 26, 1885 (1 Supp. Rev. St. U. S., p. 479), it is provided that it is illegal for any person to in any way assist or encourage the *migration* of any alien or foreigner *into* the United States under previous contract with said alien or foreigner to perform labor or service of any kind in the United States, its territories, or the District of Columbia. Such contracts are avoided, and a penalty of $1,000 is imposed for every such offense as to each alien or foreigner. Thus it is made illegal to assist or encourage the *migration* of any alien *into* the United States under previous contract with him to perform labor in the United States; that is to say, it is illegal to assist or encourage any alien *to remove or change his residence into the United States* under previous contract with him to perform labor in the United States. Now, every foreign seaman *on a vessel of this* or a foreign country, signed on the articles aboard, *is an alien contracted with to perform duty in the United States while the vessel lies in the United States,* loading; **but he is not contracted with to remove to the United States, or assisted or encouraged to migrate—to change his residence—to the United States, to perform labor there.** It is to be assumed that Congress uses language employed by it in its enactments in its ordinary meaning and acceptation. The particular statute invoked on behalf of the respondent, being that of March 3, 1891, clearly relates to immigration, and is leveled only against immigrants—that is, those who are coming to the United States to make it a home—for in the first section it is declared that certain classes of aliens shall be excluded from admission into the United States 'in accordance with the existing Acts regulating immigration'. The third section excludes the encouragement of immigration to this country

of aliens by promise of employment, advertisement, and the like. The fourth makes it unlawful for steamships or transportation companies or vessel owners by writing or otherwise, to solicit or encourage immigration of aliens into the United States, other than by stating the sailings of their vessels and their facilities. The sixth section forbids the bringing into the United States of any aliens not lawfully entitled to enter, and punishes the offense; and the eighth section provides that upon the arrival by water of alien immigrants at any port it shall be the duty of the master to report the name, nationality, etc., of the alien to the proper officers, and provides for an inspection of these persons before they can be lawfully landed. The tenth section then declares that all aliens who may unlawfully come into the United States shall be sent back on the vessel by which they were brought in at the cost of the master or owner, and, if the said master shall refuse to receive back such aliens as he unlawfully brought to the United States and as were sent back to the vessel or shall refuse or neglect to return them to the port from which they came, he shall be punished in a fine of not less than $300, and shall not have clearance of his ship until it is paid. Here we see a definite purpose to exclude the immigration, and the bringing of persons intending to immigrate, into the United States, if they belong to the excluded classes, with definite specific provisions for their deportation by the medium through which they entered the country. If this law applied to the crews of ships generally, by Section 6 of this Act, as well as by the section of the previous Act cited in the earlier part of this opinion, *no vessel, foreign or domestic, could lawfully enter the ports of the United States with an alien seaman on board.* I cannot so interpret the law. If it be said that the mere bringing into the

United States of these alien seamen may not be an offense, but that landing them would be, notwithstanding the law forbids in the disjunctive—the bringing into 'or' landing—then we have presented by this contention the duty, as one imposed by Congress, that the masters of all ships, American or otherwise, shall either imprison, put under hatches, put in irons, or guard every alien seaman in their crews during their entire stay in port, however protracted by the exigencies to commerce and the ship's loading, lest one of these aliens should set foot at some time on shore for recreation or health, or for supplying his limited needs in the shops of the country. This cannot be the just interpretation of the laws of Congress upon the subject of immigration, and such interpretation is not justified by the terms of those statutes, upon a general survey of them in all their parts. *These immigration statutes are to be construed as a whole, and not by singling out particular words or sections, and interpreting them according to their strict letter.* A thing may be within the letter of the statute, and yet not within the statute, because not within its spirit, nor within the intention of its makers. 'All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence.' *Holy Trinity Church v. United States,* 143 U. S. 461, 12 Sup. Ct. 512, 36 L. Ed. 228. 'Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion.' *Lau Ow Bew v. United States,* 144 U. S. 59, 12 Sup. Ct. 520, 36 L. Ed. 344. A consideration of the whole legislation on the subject of alien immigration, of the circumstances surrounding its enactment, and of the unjust results which would

follow from giving such meaning to it as is here claimed for it, makes it unreasonable to believe that Congress intended to include a case like the present one. My opinion is that these statutes do not contemplate the exclusion of the crews of vessels which lawfully trade to our ports, and that they do not, in spirit or in letter, apply to seamen engaged in their calling, whose home is the sea; who are here today and gone tomorrow; who come on a vessel into the United States with no purpose to reside therein, but with the intention, when they come, of leaving again, on that or some other vessel, for the port of shipment or some other foreign port in the course of their trade. To hold that these statutes apply to aliens comprising the bona fide crews of vessels engaged in commerce between the United States and foreign countries would lead to great injustice to such vessels, oppression to their crews, and serious consequences to commerce."

So, also, in the case of *Moffitt v. United States,* 128 Fed. 375-78 (U. S. C. C. A. 9th Circ.), the Court points out that what is known as the Contract Labor Law and as the Immigration Acts, are unified by amendments; that they are highly penal, and should be so construed as to bring within their condemnation only those who are shown by direct and positive averments and clear proof, to be embraced within the terms of the law. That

"they should be construed as a whole, and not by selecting particular words or sections, and interpreting them according to their strict letter. * * * They should not be so construed as to include cases which, although within the letter are not within the spirit of the law."

From the foregoing it appears that, what was done by respondent in the present case, was done under an interpretation of the law sanctioned both by the highest judicial authority and by the executive practices of the Department of Labor in which the Department of Justice concurs.

We shall presently refer to the memorandum opinion of the Commissioner General of Immigration, set forth in the plaintiff's brief, pp. 18-22.

But in addition to the foregoing we have also a

LEGISLATIVE INTERPRETATION OF THE ACT, SHOWING THE INTENTION OF CONGRESS TO EXEMPT SEAMEN.

In this connection we refer to the Act of Congress of March 4, 1915, whose very title fixes the purpose of Congress to permit foreign seamen to desert in an American port and thus be landed in contravention of plaintiff's construction of the Act here under consideration. That Act is entitled, *"An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto"*, etc.

Section 16 of that Act provides:

> "That in the judgment of Congress articles in treaties and conventions of the United States, in so far as they provide * * * for the arrest and imprisonment of officers and seamen *deserting* or charged with *desertion from merchant vessels of foreign nations in the United States* and

the territories and possessions thereof, and for the co-operation, aid, and protection of competent legal authorities in effecting such arrest or imprisonment and any other treaty provision in conflict with the provisions of this Act, ought to be terminated, and to this end the President be, and he is hereby requested and directed, within ninety days after the passage of this Act, to give notice to the several governments, respectively, that so much as hereinbefore described of all such treaties and conventions between the United States and foreign governments will terminate on the expiration of such periods, after notices have been given as may be required in such treaties and conventions."

Section 17 provides:

"That upon the expiration after notice, of the periods required, respectively, by said treaties and conventions, and of one year in the case of the independent State of the Kongo, so much as hereinbefore described in each and every one of said articles shall be deemed and held to have expired, and to be of no more force and effect, and thereupon Section 5280 and so much of Section 4081 of the Revised Statutes, as relates to the arrest or imprisonment of officers and seamen *deserting or charged with desertion from merchant vessels of foreign nations in the United States* and territories and possessions thereof, and for the co-operation, aid, and protection of competent legal authorities in effecting such arrest or imprisonment, shall be, and is hereby repealed."

Section 5280 of the Revised Statutes thus repealed, gave the right to arrest only persons *"not being a citizen of the United States."* As construed by the Attorney General, this section applied only to cases of desertion that occurred while the vessel

was *in a port of the United States,* and wherein the person charged with desertion is *not a citizen of the United States.* (16 Op. Atty. Gen. 358.)

Likewise, Section 4081 of the Revised Statutes above referred to, applies only to persons who are *not citizens of the United States.*

What, then, is this legislation other than an Act to facilitate the landing of "alien seamen" in the United States? The master is deprived of the power of returning them to the vessel against their will, and thus is incorporated an express exception into the "Act to Regulate the Immigration of Aliens into the United States," upon which Act this action is based.

The Act of *March 4, 1915, which now takes away the right to apprehend such a man and return him to the ship,* is, in effect, a *legislative mandate* to permit such a man to land notwithstanding the provisions of the "Act prohibiting the landing of *alien* immigrants." It makes sailors as effectively an exception to the latter Act, as if they had been specially mentioned in the Immigration Act, which latter specifically *commands the arrest* and return of *alien immigrants.*

In *Taylor v. United States,* the master was being prosecuted for negligently permitting a sailor to desert; an alleged violation of the Immigration Act. The Court said the Act does not apply to a sailor going ashore in the course of his business. Now Congress comes forward and emphasizes the fact

that it does not apply to a sailor at all, but makes him an exception among all "alien immigrants" by prohibiting his compulsory return.

As said by Senator Burton, in his address before the Senate, when this bill was under consideration:

> "The avowed object of this bill, declared by its advocates, is to give the seaman an opportunity to obtain money so that he may desert." (Cong. Record, 63rd Congress, p. 5493.) 3d Cir. No. 4740-41

Moreover, at the time that this law was enacted, all the foregoing judicial and executive interpretations of the "Act to regulate the Immigration of Aliens to the United States" were in force and recognized. Congress was expressly engaged in passing an Act "to promote the welfare of American seamen in the Merchant Marine of the United States", and is presumed to have known of the decisions and the executive practice. Nevertheless, being so engaged as aforesaid, Congress not only does not countenance plaintiff's construction, but on the contrary, as above suggested, *expressly* extended the exception by refusing to allow the apprehension and return of "alien seamen" deserting from *foreign* vessels *in the United States.*

While, as we have elsewhere suggested, so far as the present action is concerned, it is immaterial whether the seamen be Chinese or English or Scandinavians, they are alike "alien seamen", nevertheless, in this connection we have another very interesting bit of evidence of the intention of Con-

gress with respect to the employment of alien seamen, and particularly Chinese seamen on board of *American* vessels. At the same time it tends to dispose of the plaintiff's argument based upon the theory that

AN AMERICAN VESSEL IS AMERICAN SOIL UPON WHICH CONTRACT LABOR IS PROHIBITED.

A communication from the International Seamen's Union of America was addressed to the President of the United States, calling attention to the fact that consular officers of the United States, in dealing with vessels and crews of vessels, *make no distinction between Chinese persons* who are seamen, *and other persons,* who are seamen.

A legal argument, based upon the decisions of the Courts, follows, which is very nearly identical with the plaintiff's argument now presented to this Court:

among the classes of Chinese persons expressly permitted to enter the United States

(a) That Chinese seamen are not in terms included under the provisions of the Chinese Exclusion Act.

(b) That judicial construction has not enlarged the Exclusion Act so far as it applies to Chinese persons permitted to enter or to reside within the jurisdiction of the United States.

(c) That the executive departments of the Government while acting upon that construction, nevertheless excepted Chinese *seamen* therefrom.

(d) That a vessel of the United States is territory of the United States.

(e) That when a Chinese person is on board a vessel of the United States, he is in the territory of the United States.

(f) That such being the case, since a Chinese person has no right to be in the territory of the United States, he has no right to serve as a *seaman* on board of a vessel of the United States.

For these reasons the petitioner asked the President, "to the end that American seamen may be spared further injuries by the *non-execution of statutes* to the protection whereof they believe themselves entitled", "to direct the Consular, Immigration and other executive officers to co-operate in enforcing the Chinese Exclusion law *in the matter of seamen.*" 50 Cong. Rec. 63 Congress, First Session, p. 5672.)

This was a direct appeal to the President of the United States to set aside the judicial and executive interpretation of the Act which held that Chinese *seamen* are *not* within the meaning of the Act.

The petition was evidently denied, and so it was *laid before Congress* in extenso, when Congress was considering the "Act to promote the welfare of American seamen in the merchant marine of the United States", etc., to the end that Congress might incorporate in that Act some suitable provision to accomplish the purpose set forth in the petition.

The latter Act, as passed, shows that Congress preferred the interpretation placed by the Courts upon the Act to that suggested by the petitioners.

What more convincing evidence can we have that Congress did not intend that seamen should be classed as "laborers" under either the Immigration Act, the Chinese Exclusion Act, or the Contract Labor law? Is not that the legislative reply to the entire argument of plaintiff in this case, conclusively expressing the intention of Congress that the construction which plaintiff now proposes for the law in question is directly opposed to what Congress intended when enacting that law?

Congress seems to have a different idea from that which plaintiff appears to have, of what would "promote the welfare of American seamen in the merchant marine of the United States."

The foregoing would seem to dispose of the argument based upon the proposition that an American vessel is American soil on which contract labor is prohibited.

The fact that an American vessel is American territory or a place subject to the jurisdiction of the United States within the meaning of Section 33 of the Act, will not help the argument of plaintiff if it be held that seamen are not laborers within the prohibition of the Act.

But the theory under which it is held that an American vessel is American soil, is itself only a rule of law or legal principle adopted to overcome certain inconveniences attending a vessel's nomadic character, and as such, is subject to the principle

that when the reason of the rule ceases, the rule ceases.

Like with statutes, the rule is subject to the principle announced by this Court in the *Church of the Holy Trinity* case, that

> "All laws * * * should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence."

Some of these consequences are pointed out in the case of *United States v. Burke, ante,* but the suggestion that a contract of service by an alien on board of an American ship is a violation of the law because an American ship is American territory, leads to additional injustice and absurd consequences which it could not have been the intention of Congress to promote, but which, by the enactment of the departmental rules hereinbefore referred to and the creation of the Shipping Board, it was the evident intention of both the executive and legislative departments to overcome.

Assuming that an American vessel is American territory, and that the Act prohibits a contract with an alien for the performance of labor upon American territory, we have the result that *an American vessel abroad* requiring a crew, in whole or in part, *can not hire any seaman. When short of a crew in a foreign port, she must either go out of commission,* or *"lie by"* until "like labor" to be "found in this country" can be transported to the ship—a very effectual means of destroying all American

commerce. Surely Congress did not mean to do this, yet, if we concede plaintiff's contention that seamen on board an American vessel are within the prohibition of the Act, such is the necessary result of the consistent application of that construction.

Plaintiff recognizes the cogency of this line of argument, when he devotes so much space to the enumeration of the "results of seamen signing as was done in this case". He cites various statutes which render it necessary that such alien contract laborers, because of their so acquired character of "American seamen" "be permitted to land on shore". But what of it? That is no greater right than by the "Seamen's Act" is accorded to all seamen, whether *American or foreign*. Before the enactment of the Seamen's Act, these landings were permitted by the Courts in pursuance of their calling as seamen because not inconsistent with their reshipment to a foreign port when the purpose of their landing is fulfilled. For instance: An American seaman is entitled to go to the United States Commissioner's office *to receive his pay* in the event that he be *transferred to another vessel.* But under the rule laid down by *Taylor v. United States,* if he were an alien seaman on board a *foreign vessel,* he would be entitled to do the same.

> "But it is necessary to commerce, as all admit, that sailors should go ashore, and no one believes that the statute intended altogether to prohibit their doing so. The contrary always

> has been understood of the earlier Acts, in judicial decisions and executive practice." (207 U. S. 125.)

So, too, with his right to be present at a trial for his wages, or his discharge in the United States if the vessel be unseaworthy, or his right to go ashore to make a complaint. So, too, with his return to the United States in the event of the wreck of the "Mackinaw", or the duty of the consul to send him back to the United States if he becomes destitute in a foreign country. *Always his contract with the "Mackinaw" is that his final port of discharge shall be Shanghai, China.* Hence his return to the United States would be only one step toward his return to Shanghai.

But what shall we say with respect to the aforesaid difficulties and inconsistencies in the statutes mentioned by the plaintiff, when we consider the purpose and the effect of the "Seamen's Act" in connection with the landing of alien seamen brought here under contract of service, whether on American or foreign vessels? Is that which is only technically American soil, namely, an American vessel, any more sacred than that which is actually American soil? And would not the same necessities of commerce, or the same policy of law which permit him to land upon the actual soil, and there remain, also permit him to remain upon that which is only technically American soil?

Plaintiff's suggestions regarding such alleged difficulties concludes with a memorandum opinion of the General Commissioner of Immigration, concerning which we said we would speak further.

It is to be noted that no recovery can be had in this case by reason of any alleged violation of the Chinese Exclusion Act, even though it were to be conceded that the acts here complained of were such violation. This is *not* an action for the recovery of the penalty provided for by any of the provisions of that Act, but simply and only a penalty specially provided for a violation of the Alien Immigration Act, so far as that relates to what is known as "Alien Contract labor". It is therefore immaterial in the present action whether or no the seamen in question be Chinese or Englishmen. For that reason, the opinion of the General Commissioner of Immigration above referred to, has no direct application.

However, the opinion is illogical, and therefore should carry no weight. The Commissioner had under consideration the case of the Chinese crew of an American vessel. He adopts the proposition that an American vessel is part of the territory of the United States. He concedes that the principles laid down in the case of *United States v. Burke,* 99 Fed. 895, *are settled,* and

> "as a result any Chinese seaman lawfully coming on a vessel to any port of the United States may go ashore under proper and reasonable restrictions for shore leave *or for the purpose of*

again signing as a member of the crew of some other vessel than the one by which he came just as seamen of any other race, anything in the Chinese Exclusion Laws to the contrary notwithstanding. This the Bureau has *not understood to be a disputed proposition for some time."*

By what process of reasoning, then, can such seaman be denied the right to be transferred from one American vessel to another American vessel, or be denied "the right of signing as a member of the crew of some other vessel than the one by which he came"?

It appears to us that when the learned Commissioner speaks of "juggling of the rules of reason and common sense", that he deliberately closes his eyes to them.

It is immaterial under the law, as conceded by the learned Commissioner, whether the Chinese shall have arrived as members of the crew of an American vessel or of a foreign vessel, for if, as conceded, they may be permitted to land for the purpose of again signing as members of the crew of another vessel, just as seamen of another race may, and since it is also conceded that seamen of any other race may transfer from either an American vessel or a foreign vessel to an American vessel for a foreign voyage, it would seem that the argument is at an end.

PLAINTIFF ESTOPPED FROM RECOVERY BECAUSE THE EXECUTIVE DEPARTMENT NOT ONLY SANCTIONED THE TRANSFER OF THE SEAMEN, BUT ITSELF TOOK AN ACTIVE PART IN THE ACCOMPLISHMENT OF SAID TRANSFER.

If the rules of the Department be legal,—that is, "not inconsistent with law", there can be no question of the right of the defendants to do what they are alleged in the complaint to have done. *It is only by declaring those rules void* that any hope of recovery can be hand in this case, for the rules, as they stand, *have the force of law.* In view of the decisions to which we have hereinbefore referred, the presumption is that they are not "inconsistent with law."

Should it, however, transpire that this Court is of a different opinion, we nevertheless contend that the existence of these Department Rules, as well as the Act of the Government, through the intervention of the Shipping Commissioner in reshipping the men, is a complete defense to this action by a *private party.*

There is no question but what this is a civil action for debt, and as such, is subject to the rules of law applicable to civil actions.

As said by this Court:

> "Such an action is to be conducted and *determined* according to the *same rules* and *with the same incidents* as are other civil actions."
>
> *United States v. Regan,* 232 U. S. 467;
>
> *Grant v. United States,* 232 U. S. 647.

With this principle thus established, what is the result? This is not an action brought by the Government, but is an action brought by a *private person for his own benefit,* as under the law he is permitted to do. The action, therefore, is an ordinary civil action by one private person against another to recover a debt.

The right of recovery of such private person, is secondary to the right of the Government to deal with the penalty. For instance, assuming the penalty alleged to have been incurred and thereafter to have been by the Government remitted, the plaintiff could not recover. So, also if the defendant had paid the fine to the Government, the acceptance of the same by the Government would discharge the defendant, and the plaintiff could not recover.

In the present case the Government has recognized the right of the defendant to do the things for the doing of which plaintiff seeks to recover. It has recognized this right by enacting rules which exempted seamen from the provisions of the Act. If these rules be invalid, nevertheless the Government thereby invited and induced the defendant to commit the acts complained of. The Government has further recognized the right in this particular case, as already suggested, by participating in the acts complained of.

Now the plaintiff must accept the conditions which the Government, whether rightly or wrongly, has been pleased to impose; he cannot disavow the

act of the Government. For the purposes of this case, whatever the Government has done in the premises, the plaintiff has done; and, having done these things, is not the plaintiff estopped from claiming the penalty? The inequity and injustice of an attempt to penalize the defendants, in the face of such explicit invitation to do the acts complained of, is only too apparent, and nothing but a superior policy of the law could make such injustice successful. Does such policy exist *in favor of the plaintiff?*

In this connection, it must not be lost sight of that, if the Government had desired to enforce this penalty, it would itself have brought the action. Not having taken such action, is tantamount to the Government's disapproval of the position taken by the plaintiff. But, since the plaintiff has, for his own private ends and purposes, and for his own benefit, commenced an action, it is but fair that he should not be permitted to succeed in such an unjust cause, unless the Court be absolutely compelled, by inflexible rules of law whose application cannot be questioned, to permit it.

We do not think the Court is so compelled. This being a civil action for debt between private parties, to be conducted and determined according to the same rules, and with the same incidents as are other civil actions, we think, under the circumstances, that the doctrine of estoppel is applicable, and that this is a plain case calling for its enforcement.

PLAINTIFF'S CONTENTION THAT THE EXCEPTIONS STATED IN THE ACT EXCLUDES ALL OTHER EXCEPTIONS—THAT SEAMEN NOT HAVING BEEN PLACED WITHIN THE EXCEPTED CLASSES IT IS CONCLUSIVELY PRESUMED THAT CONGRESS INTENDS THE LAW TO APPLY TO THEM.

This is one of the leading points urged by petitioner, namely, that inasmuch as the Act provides that its provisions "shall not be held to exclude professional actors, artists, lecturers, singers, ministers of any religious denomination, professors for colleges or seminaries, persons belonging to any recognized learned profession, or persons employed strictly as personal or domestic servants", and as seamen are not among the classes of labor above enumerated, they are, therefore, included among the laborers prohibited by the Act.

We feel that petitioner is too late in offering that suggestion to this Court, since the principle has already been considered with great care and definitely determined by this Court in the *Church of the Holy Trinity* case.

In that case the Court had under conisderation the original Act (23 Stat. at L., 332), which contained like exceptions. Indeed, it was identical with the present statute, except that the amendment has added ministers, professors and the learned professions to the list. There the lower Court (36 Fed. 305) *based its decision* upon the rule of construction now urged upon this Court by the petitioner, saying:

> "Giving effect to this well settled rule of statutory interpretation, the proviso is equivalent to a declaration that contracts to perform professional services except those of actors, artists, lecturers, or singers, are within the prohibition of the preceding sections."

But when the case came before this Court, the ruling was reversed, special notice being taken of this argument of the Circuit Judge. We feel, therefore, that it is no longer an open question as applied to this statute.

CONCLUSION.

We notice plaintiff's plea that the provisions of the Act in question "were intended to prevent the bringing of the labor of this country into competition with the pauper labor of other countries, and to say that seamen should meet such competition would be in effect to hold that they were not a part of the people of this country". (Brief, pp. 34-36.)

We do not quote the entire matter relating to this subject, but nevertheless we invite the attention of the Court to the same, as it appears in petitioner's brief.

In reply we suggest that in many respects it ignores a broad and well-recognized difference between the labor of seamen and the labor of the class which the Court had in mind when, in the case of the *Church of the Holy Trinity,* it referred to the motives and history of the Act. It loses sight of

the fact that seamen are *of necessity,* so far as their occupation is concerned, *citizens of the world,* and as such, *of necessity in competition with the world.* This seems to be conceded in the closing paragraph of petitioner's appeal, when he makes suggestion that "the remedy should be sought in Congress", and alleges that "There is abundant power to regulate and harmonize the whole matter by subsidy or otherwise". In passing, we might suggest that "subsidy" will not do it, for subsidy is met by subsidy; and the "otherwise" is an indefinite suggestion, whose indefiniteness is born of the fact that economic laws applicable to this department of commerce have defied the intelligence of man "otherwise" to "regulate and harmonize the matter".

We say that seamen are citizens of the world because, of necessity, whether shipped on an American or a foreign vessel they come and go between the ports of the world, technically, perhaps, residents of a particular country, but practically residents of no country. There may have been a time when a seaman could be kept by the ship for the full term of his employment, and returned to the port of embarkation with the ship, but that time has passed. They know no law or obligation under their contract, save the law or obligation that binds the vessel. Under the present legislation, they stay on board so long as they desire, and leave when they list. Of necessity ships pick up members of their crew in all ports of the world. While theoretically the obligation of contract is bilateral, in

practice it is unilateral, with the result that, if it be determined that an American ship is American soil, and that the terms of the Contract Labor law apply to seamen, commerce would be impossible, for no American vessel would be able to reinstate its crew at a foreign port, but must cease to plough the seas, or lie by until American seamen (whose scarcity petitioner admits) can be found unemployed and transported to the foreign port. Such is the actual, practical condition, and would be intolerable. Truly petitioner observes "Their services are of such a character in this age that without them commerce between this and other countries cannot be carried on", and yet petitioner admits the fact, in which we concur, that *"we have few* NATIVE BORN *sailors or American officers on American vessels"*. The reasons he assigns for this are: "the hardships of the calling", but these hardships are no greater on board American vessels than they are upon foreign vessels; "competition with *Asiatic* labor", a specialization which is true only in part, and that, too, a minor part, for the competition is more largely with European labor; "Insufficiency of food in the past", which has never been so apparent on American vessels as upon foreign vessels; "Other things incident to the sailor's calling", which by its very terms includes the ships of all nations. Yet these are the things which are supposed to have deterred "American youths" from adopting the sea as a calling.

In this enumeration, there stands out the controlling indictment of "hardships of the calling" and "other things incident to the sailor's calling". It is these, and the more comfortable conditions on land, taken in connection with the great internal prosperity of the country, offering larger and greater inducements to the American youths, that has withdrawn them from the sea; and no interpretation of this Act that would confine employment on board American ships to American youths would remove these objections, or withdraw them from the prosperous conditions at home. It is common knowledge that since the departure of clipper ships from the ocean, American ships have been manned, and are still manned, not by "American youths", or "native born sailors", but by *foreigners,* naturalized or unnaturalized. We do not wish to cast any reflection upon naturalized citizens, but a plea is here made for a construction of this statute which it is suggested will induce native born American youths to go to sea, and we are meeting it with the suggestion that that is a mere piece of oratory, and that neither native born American youths nor naturalized citizens will man our ships so long as the economic conditions of the country itself offers them better employment ashore.

From these conditions, it follows that the construction urged by plaintiff for this Act would be that our source of supply for American seamen would be entirely cut off, for if the law applies

to foreigners, it applies to them *generally* and *not to any particular class* of foreigners.

Reference is made to the decision of the Court of Appeals *In re Pacific Mail Steamship Company,* with the suggestion that a vessel "manned with the men in question in this case on board is unseaworthy", but the statement is too broad, and does not meet the issue. It is directly refuted by the present practice in conforming with the Seaman's Act, requiring language tests. Many Asiatics understand the English language sufficiently to pass the test, and are employed on American vessels subject to and in accordance with that law. Many Europeans do not understand the English language sufficiently to pass the test, and are on that account excluded. The attempt to narrow the question here presented down to the question of employment of Asiatics is illogical and an appeal to prejudice. The law either applies to all classes of foreign sailors, or to none.

But let us consider for a moment this question of "Competition with Asiatic labor" in its true bearing upon the question here under consideration.

If it be intended to promote the enlistment of native-born Americans in the calling of the sea, it must be conceded that we must have American vessels upon which they can be employed. There can be no employees where there are no employers.

Now, what is the situation in this respect with regard to "Competition with Asiatic labor"? We have upon the Pacific Ocean a wonderfully active and efficient competitor for the world's trade in the Japanese people; they are placing magnificent ships, manned almost exclusively by Japanese, upon the seas competing for the commerce of the world, and particularly for the commerce between American and Asiatic ports. Here we have cheap Asiatic labor in direct competition with American labor out of our own ports,—labor, too, that is content with its conditions, loyal to its flag, and will not desert in American ports, even under the invitation of the American Seaman's Act. How, then, are American vessels, manned by "native born American seamen" and crippled in their command, their means of discipline and scale of wages by American legislation, to compete with these ships? And if they cannot compete, how can they continue in the trade? And if they do not continue in the trade, how shall the American youths find sea employment? Of what avail is the idealism and oratory based upon the rights and liberties of free born American citizens against such competition? We must either meet it in kind, or quit. We submit that no Court will assume that it is the purpose and intent of the American Congress to so legislate as to frustrate its own purpose and intention,—that while apparently legislating in favor of American seamen it is still the purpose and intent to destroy his occupation by driving his means of occupation from the sea.

Hence we say, that this attempt to drive foreign seamen from American ships, is a shortsighted suicidal policy, which the appeal to the prejudice against "Asiatic labor" does not improve.

Perhaps the broader vision with which the present war has so suddenly endowed us, will tend to relieve us of our provincialism in this field, as it already has in the wider field of action—teaching us that, in small things as well as in great things, we live in the world and are of the world—an integral part of the great community of nations.

Dated, San Francisco,
September 17, 1917.

Respectfully submitted,

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IRVING H. FRANK,
Attorneys for Respondents.

SCHARRENBERG *v.* DOLLAR STEAMSHIP COMPANY ET. AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 192. Argued October 12, 1917.—Decided November 5, 1917.

Inducing and assisting aliens to come from abroad, working as seamen on the way, for *bona fide* service as seamen on an American ship during her voyage from American ports to foreign countries and while she lies in such ports preparatory to or in the course of such voyage, is not an assisting or encouraging of the importation or migration of alien "contract laborers" "into the United States," within §§ 4 and 5 of the Act of February 20, 1907, 34 Stat. 898, as amended by the Act of March 26, 1910, 36 Stat. 263.

As these acts of Congress apply to all alien contract laborers without regard to their origin or nationality, in a suit to enforce their highly penal provisions the circumstance that the aliens in question were Chinese subjects is without significance.

An American ship engaged in foreign commerce is not a part of the territory of the United States in the sense that seamen employed upon her while in American ports or on voyages can be said to be performing labor in this country within the meaning of the statutory provisions above cited.

229 Fed. Rep. 970, affirmed.

THE case is stated in the opinion.

Mr. H. W. Hutton, with whom *Mr. J. H. Ralston* and *Mr. W. E. Richardson* were on the briefs, for petitioner.

Mr. Nathan H. Frank, with whom *Mr. Irving H. Frank* was on the brief, for respondents.

MR. JUSTICE CLARKE delivered the opinion of the court.

This is a suit to recover penalties upon the claim that the defendants "knowingly assisted and encouraged the importation and migration" of certain alien contract laborers into the United States, for the purpose of having them perform labor therein in violation of §§ 4 and 5 of the Act of Congress of February 20, 1907, 34 Stat. 898.

The Circuit Court of Appeals for the Ninth Circuit affirmed the judgment of the District Court, sustaining a general demurrer to the second amended complaint and the case is here for review on certiorari.

The complaint is in nineteen separate counts in identical form and each relating to the employment of a single man. The essential allegations of each count, with a difference only in name of the man employed, are as follows:

That in 1913 the three defendant corporations were

operators of the British steamship "Bessie Dollar," and also of the American steamship "Mackinaw," and that the defendant Abernethy was the master of the former; that when the "Bessie Dollar" was in the port of Shanghai, China, the defendants formed the design of procuring a crew of alien laborers to be transferred to the "Mackinaw" at San Francisco, and to that end, although the "Bessie Dollar" had a full crew of officers and men, they procured one Dung Pau to sign shipping articles as a "purported seaman" for service on her as follows, viz:

"On voyages from Shanghai to San Francisco, there to join the S. S. 'Mackinaw,' or any other vessel, within the limits of 70 degrees north and 70 degrees south latitude, trading to and from as may be required, and back to Shanghai, to be discharged with consent of local authorities. Term of service not to exceed two years. The master has the option to transfer any or all of the within mentioned persons to any other British or Foreign ship bound to Shanghai in the same capacity and at the same rate of wages."

It is also alleged that Pau "worked as a seaman" on the voyage to San Francisco, and on arrival there was discharged from the "Bessie Dollar," and that on the same day, pursuant to the design formed in Shanghai, he signed shipping articles before the United States Shipping Commissioner for the Port of San Francisco for a voyage on the "Mackinaw" as follows:

"From San Francisco, Cal., to Shanghai, China, and such other Asiatic Ports as the master may direct, via Grays Harbor, Seattle, Wash., and such other ports on the Pacific Coast as the master may direct; final port of discharge shall be Shanghai, China."

And, finally, it is averred that, pursuant to the second contract, Pau worked "as a seaman" on board the "Mackinaw" in the Port of San Francisco for some days, and on the voyage from San Francisco to Grays Harbor,

Washington, and at Grays Harbor until the time of the commencement of this action.

The employment of the man to serve as a *bona fide* seaman on the "Mackinaw" is not questioned, and the allegations of the complaint negative any suspicion that the employment of him in China was a subterfuge adopted for the purpose of unlawfully securing his entry into the United States.

Basing his right upon the allegations of the complaint, which we have thus epitomized, the claim of the petitioner is, that by employing and bringing an alien laborer as a seaman to San Francisco, in the manner described, for the purpose of shipping him, followed by his actually being shipped, as a seaman on board a vessel of American registry, the defendants violated the Act of Congress of February 20, 1907, 34 Stat. 898.

The argument in support of this claim is that the seaman, described in each count of the complaint, was an alien contract laborer; that the steamship "Mackinaw" was a part of the territory of the United States, and that therefore the contracting to bring such alien to San Francisco and to there employ him upon such a vessel was to knowingly assist and encourage the migration of an alien contract laborer into the United States, for the purpose of having him perform labor therein, in violation of the fourth and fifth sections of the act.

The validity of this claim, and of the argument in support of it, calls for the construction of three short provisions of two statutes.

Section 2 of the Act of 1907, as amended in 1910 (36 Stat. 263), furnishes this definition of "contract laborers," which must be read into §§ 4 and 5 of the Act of 1907:

"Persons . . . who have been induced or solicited to migrate to this country by offers or promises of employment or in consequence of agreements, oral, written

or printed, expressed or implied, to perform labor in this country of any kind, skilled or unskilled."

Section 4 makes it a misdemeanor for any corporation "in any way to assist or encourage the importation or migration of any contract laborer or contract laborers into the United States."

Section 5 imposes severe penalties for every violation of the act "by knowingly assisting, encouraging, or soliciting the migration or importation of any contract laborer into the United States."

Thus a contract laborer is one who under the conditions described in the first of these statutes comes "*to perform labor in this country*," and the penalties denounced by the sections of the other act are against persons who knowingly assist or induce the importation or migration of such laborer "*into the United States*."

The purpose of this alien labor legislation was declared by this court almost thirty years ago, in *Holy Trinity Church* v. *United States*, 143 U. S. 457, to be, to arrest the bringing of an ignorant, servile class of foreign laborers into the United States, under contract to work at a low rate of wages, and thus reduce other laborers engaged in like occupations to the level of the assisted immigrant.

Having these terms of the statutes and this history in mind, can it with reason be said that the men shipped on the "Mackinaw" as "seamen" were "laborers," and that when employed upon that vessel in foreign commerce they were performing labor "in this country" within the meaning of the acts?

In familiar speech a "seaman" may be called a "sailor" or a "mariner," but he is never called a "laborer," although he doubtless performs labor when assisting in the care and management of his ship; and a "seaman" is defined in the United States statutes applicable to "Merchant Seamen," as being, any person (masters and appren-

tices excepted) who shall be employed to serve in any capacity on board a vessel, Rev. Stats., § 4612. In the shipping articles, which the United States law requires shall be signed by members of the crews of ships of American registry engaged in foreign commerce, the men are designated as "seamen" or "mariners." Thus, neither in popular nor in techinical legal language would the men employed on the "Mackinaw" be called or classed as "laborers," and such seamen are not brought "into this country" to enter into competition with the labor of its inhabitants, but they come to our shores only to sail away again in foreign commerce on the ship which brings them or on another, as soon as employment can be obtained.

Equally unallowable is the contention that a ship of American registry engaged in foreign commerce is a part of the territory of the United States in such a sense that men employed on it can be said to be laboring "in the United States" or "performing labor in this country." It is, of course, true that for the purposes of jurisdiction a ship, even on the high seas, is often said to be a part of the territory of the nation whose flag it flies. But in the physical sense this expression is obviously figurative (International Law Digest, Moore, vol. I, § 174), and to expand the doctrine to the extent of treating seamen employed on such a ship as working in the country of its registry is quite impossible. Thus the seamen employed on the "Mackinaw" were not within either the spirit or the letter of the law on which the petitioner bases his action and in any point of view his contention is fanciful and unsound and must be denied.

In the result thus reached we are adopting the construction given to another section of this Act of Congress of 1907 in *Taylor* v. *United States*, 207 U. S. 120, and we are approving the construction placed upon the sections we are here considering of the act, and upon earlier acts

relating to the immigration of alien laborers, in the long-standing decisions of many lower courts and of the Department of Justice, in all of which it is held that seamen employed in foreign commerce cannot be considered alien contract laborers within the terms of the various statutes. *United States* v. *Sandrey*, 48 Fed. Rep. 550; *United States* v. *Burke*, 99 Fed. Rep. 895; *Moffitt* v. *United States*, 128 Fed. Rep. 375; *United States* v. *Jamieson*, 185 Fed. Rep. 165; Immigration—Deserting Seamen—23 Opinions of the Attorney General, 521; Chinese Seamen—Transfer of Crew—Alien Laborers, 24 Opinions of the Attorney General, 553. This construction of the act has also long been applied by the Department of Labor in its practical administration of the law. See Immigration Rules 1911, No. 10, Subdivision 1, (a), (c), and (d), subdivision 3.

The fact that the aliens in this case were Chinese subjects is without significance. The suit is to enforce the highly penal provisions of acts of Congress which apply to all alien contract laborers without regard to their origin or nationality.

It results that the judgment of the Court of Appeals must be

Affirmed.